

Item No. 5.	Classification: Open	Date: 2 February 2023	Meeting Name: Licensing Sub-Committee
Report title:		London Local Authorities Act 1991: Winta Beauty Salon Ltd, 151 Rye Lane, London SE15 4TL	
Ward(s) or groups affected:		Rye Lane	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Genet Berhe for a new special treatment licence in respect of the premises known as Winta Beauty Salon (nee. Sabrina Beauty Salon), 151 Rye Lane, London SE15 4TL.
2. Notes:
 - a) This application for a new special treatment licence is made in accordance with Part II of the Regulations made by Southwark Council under section 10(1) of the London Local Authorities Act 1991, specifically for premises offering special treatment. A Copy of the application is attached as Appendix A.
 - b) The premises are planning to provide, nail extensions, manicures and pedicure treatments. A copy of the expired special treatment licence is attached as Appendix B.
 - c) The application is subject to objections from Southwark Council licensing and Southwark Council trading standards, as responsible authorities. A copy of the objections are attached as Appendix C.

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. 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.

KEY ISSUES FOR CONSIDERATION

7. On 11 November 2022 Genet Berhe made an application for a new special treatments licence to provide manicure, pedicure treatments and nail extensions on the premises. Details of qualifications supplied with the application will be made available at the Hearing.
8. The operating hours of the premises are:
- Monday to Wednesday: from 08:00 to 22:45
 - Thursday to Sunday: from 08:00 to 22:00.

Objections

9. It should be noted that following the submission of the application, the applicant contacted the licensing authority and requesting that the name of the premises be amended as part of the application.
10. A copy of the application is attached as Appendix A.

11. Objections to the grant of a new special treatment licence have been submitted from Southwark Council licensing and Southwark Council trading standards as responsible authorities. The reasons given by Southwark's Council's licensing and Southwark Council's trading standards and for making the objections are that:
- 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 an proper persons to hold such a licence.
 - The premises have been or are being improperly conducted.
 - There is likely to be 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.
 - The persons giving the special treatment are not suitably qualified.
 - 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.
 - They are not satisfied as to the safety of the special treatment to be given.
 - A licensing sub-committee hearing to determine the application was held on 4 June 2020. During the hearing it was noted that the person previously in charge of the premises was the applicant's ex-husband (and the father of the applicant's daughter). He was/is the landlord of the premises. Further, it was noted that Ms Berhe had a demanding full time job as a nurse. It was unclear as to how Ms Berhe could effectively manage the premises, and it was felt that her ex-husband could still have a controlling interest in the operation of the premises. There were also concerns as to the insurance status of the premises.
 - This new application is a repeat of the previous application submitted by Ms Berhe, which was rejected by the licensing sub-committee. Although some years have passed since the previous application the licensing unit believe that Ms Berhe may still not be a fit and proper person to hold such a licence and that it is possible that her ex-husband may still have a controlling interest in the operation of the premises.
 - The premises was found on two occasions to be operating as an unlicensed nail bar contrary to Section 6(1) of the London Local Authorities Act 1991, which states: "no premises should be used in the borough as an establishment for special treatment except under and accordance with a special treatment licence granted under this section by the borough council."

12. A copy of the objections and notice of decision are attached as Appendix C.

Conditions

13. The Act allows the council to set standard conditions and conditions relating to the specific treatments. The standard conditions are listed in Appendix D. 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

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

History

15. The premises was first issued a Special Treatments licence in August 2013, held by Mr Amanuel Fissehaye, this has subsequently been renewed.
16. The last renewal took place on 2 November 2018 by Mr Amanuel Fissehaye.
17. On 30 October 2019 a multi-agency team comprising of Southwark Council licensing, Southwark Council social services, Southwark Council trading standards, the Metropolitan Police Service and UK Border Agency officers carried out a visit to the premises and found 10 unlicensed nail operatives working within the premises. It was noted that the premises had not renewed there licence for the period of 2019 /2020.
18. Subsequently on 30 October 2019, an application to renew the special treatments licence to provide manicure treatments was, submitted by Mr Amanuel Fissehaye.
19. On 9 January 2020, an application to transfer the special treatments licence to provide manicure as a treatment was submitted by Mrs Genet Berhe.

20. A further visit to the premises was made by a multi - agency team comprising of Southwark Council licensing, Southwark Council social services, Southwark Council trading standards, the Metropolitan Police Service and UK Border Agency officers on 29 January 2020 and found that there were three unlicensed nail operatives working within the premises.
21. During the course of the visit trading standards officers removed a large quantity of nail polish from the premises. Trading standards officers examined seven of the operational workstations within the premises removing products that did not have defined details of the origin of the products and who had brought the product into the EU as required by the provisions of the Cosmetic Products Enforcement Regulations 2013.
22. The Metropolitan Police Service comment on the visit to the premises on 29 January 2020 and state that they believe that workers have and will be exploited, and the management have failed to comply with a various legislation relating to working practice, employment law and immigration law.
23. On 30 January 2020, an application to vary the special treatments licence to provide manicure treatments was, submitted by Mr Amanuel Fissehaye.
24. On 31 January 2020, Ms Genet Berhe withdrew her application to transfer the special treatments licence.
25. On 12 February 2020 Ms Genet Berhe submitted a new licence application for a special treatment licence. However, Ms Berhe subsequently withdrew her application.
26. Further to the above visits, the application was objected to and referred to the council's licensing sub-committee for determination.
27. A further licensing sub-committee hearing to determine the application was held on 4 June 2020. At the hearing the licensing sub-committee rejected the application based on section 8 of the London Local Authorities Act 1991. The notice of decision is available at Appendix F.
28. On 30 June 2020 Ms Berhe lodged an appeal to the Magistrates' Court against the licensing sub-committee's decision to refuse her application for a special treatment licence.
29. On 21 February 2022 Ms Berhe withdrew her appeal and a consent order was made at Lavender Hill Magistrates' Court. The summons and consent order are available at Appendix G.
30. On 11 November 2022 Ms Genet Berhe submitted a new special treatment licence application. The application is to provide manicure, pedicure and nail extensions. Objections were received from Southwark's licensing unit and trading standards acting as responsible authorities. The purpose of this committee hearing is to consider this new application.

The local area

31. A map of the area is attached to this report as Appendix H. 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 are within the 100 metre radius:

- Peckham Beauty Salon, 96 Rye Lane, London SE15 4RZ
- Avi Studio Tattoo & Piercing, 142 Rye Lane, London SE15 4RZ
- Amina Beauty Zone, Sky Shopping Centre, Unit 3 137-139 Rye Lane, London SE15
- Safi Nails & Beauty, 84 Rye Lane, London SE15 4RZ
- Queens Peckham, 135a Rye Lane, London SE15 4ST
- Kimmy London, Sky Shopping Centre, Unit 5 137-139 Rye Lane, London SE15

Consultation

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

Climate change implications

33. Following council assembly on 14 July 2021, the council is committed to considering the climate change implications of any decisions.

34. Climate change is not a legal factor in the consideration of a grant of a Special Treatment Licence the under the current objectives, however members can make enquiries and request an agreement from applicants to promote the reduction of the impact of climate change that may be caused by the operation of the premises.

35. The council's climate change strategy is available at:

<https://www.southwark.gov.uk/assets/attach/48607/Climate-Change-Strategy-July-2021-.pdf>

Community, equalities (including socio-economic) and health impacts

Community impact statement

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

Equalities (including socio-economic) impact statement

37. This report does not result in a policy decision and each application is required to be considered upon its own individual merits with all relevant matters taken into account. In considering the recommendations of this report, due regard must be given to the public sector equality duty set out in section 149 of the

Equality Act 2010. This requires the council to consider all individuals when carrying out its functions.

38. Importantly, the council must have due regard to the need to eliminate discrimination, harassment, victimisation, or other prohibited conduct; advance equality of opportunity and foster good relations between people with protected characteristics and those who do not. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. The public sector equality duty also applies to marriage and civil partnership, but only in relation to the need to eliminate discrimination, harassment, victimisation, or other prohibited conduct.

Resource implications

39. 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.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Governance

40. 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

41. 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

42. 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

43. 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

44. 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

45. 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.
46. 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.
47. 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.
48. An appeal by either party against the decision of the magistrates' court under this section may be brought to the Crown Court.
49. 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.
50. 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.

51. 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.
52. 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

53. 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.
54. 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

55. 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.
56. 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.

57. 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.
58. 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

59. 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	Mrs Kirty Read Tel: 020 7525
Conditions document	Southwark Licensing, c/o Community Safety & Enforcement, 160 Tooley Street, London SE1 2QH	Mrs Kirty Read Tel: 020 7525

APPENDICES

Name	Title
Appendix A	Application
Appendix B	Expired licence
Appendix C	Objections from licensing and trading standards
Appendix D	Special treatment standard conditions
Appendix E	Briefing from public health
Appendix F	Notice of decision from 4 June 2020
Appendix G	Summons and consent order
Appendix H	Local area map

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure	
Report Author	Justin Williams, Licensing Enforcement Officer	
Version	Final	
Dated	19 January 2023	
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	24 January 2023	