


<p>Non-Executive Report of the:</p> <p>Licensing Committee</p> <p>24th May 2018</p>	
<p>Report of: David Tolley, Head of Environmental Health and Trading Standards, Directorate of Place</p>	<p>Classification: Unrestricted</p>
<p>London Local Authorities Act 1991 Application for a New Special Treatment Licence for Health and Beauty Centre, 1 Gunthorpe Street, London, E1 7RG</p>	

Originating Officer(s)	Lekan Olomo Health and Safety Officer
Wards affected	Spitalfields and Banglatown

1. Summary

Applicant: **Healthy Paradise Limited**

Name and Address of Premises: **Health and Beauty Centre
1 Gunthorpe Street
London
E1 7RG**

Licence sought: **A Special Treatment Licence under The London Local Authorities Act 1991**

Objectors: **Dr L Messias
Craig Hutchinson
Diana Hughes
Daron Pike
Zeta Azevedo**

2. Recommendations:

The Licensing Committee is recommended to consider the application and objections then adjudicate accordingly.

3. Background

- 3.1 This is an application made on the 26th February 2018 for a new special treatment licence under Section 6 (2) of the London Local Authorities Act 1991 for Health and Beauty Centre, 1, Gunthorpe Street, E1 7RG. A copy of the first application can be found at **Appendix 1**. This application was incomplete and another application was then submitted. A copy of the revised application can be found at **Appendix 2**.
- 3.2 A licence from the Council is required for the use of a premises as an establishment for special treatments. An establishment for special treatment is defined in the Act as any premises in the borough used, intended to be used or represented as being used for the reception or treatment of persons requiring massage, manicure, acupuncture, tattooing, cosmetic piercing, chiropody, light, electric or other special treatment of a like kind or vapour, sauna or other baths.
- 3.3 Planning permission is granted for the use of the premises as *sui generis* with operating hours from 08:00 until 20:00.
- 3.4 The current application is to permit the premises to operate as an establishment for special treatments offering Body Massage, Indian Head Massage, Facials, Aromatherapy, Spray Tanning, Semi Permanent Make Up and Stone Therapy.
- 3.5 Exemption has been sought from condition 12 of the standard Special Treatment Licence Conditions. This states that unless otherwise expressly permitted by the Council when a treatment is given or is being received to any part of the body other than the neck and head or feet and legs below the knee or hands and arms and is not being so given by a fully qualified physiotherapist or other person entered on the register of the appropriate professional organisation whose qualifications have been approved by the Council, the treatment may be given only to persons of the same sex as the person giving the treatment and persons of the opposite sex shall not be present.
- 3.6 If members are minded to grant this application they are requested to delegate authority to the Council to determine what treatments will be licensed based on qualification(s) of the therapists and suitable equipment provided at the premises. This is because the premises has yet to demonstrate that they have the correct equipment and trained therapists to safely carry out all special treatments applied for within their application.

4. Legal Powers and Advice

- 4.1 Licences are granted subject to standard conditions.
- 4.2 The Standard Conditions of the London Borough of Tower Hamlets made under the London Local Authorities Act 1991, Section 10 (1). It is the duty of any licence holder to be aware of and abide by those conditions. A copy of the standard conditions can be found at **Appendix 3**.

- 4.3 The council has made Regulations for annual special treatment licences under section 10 (1) of the London Local Authorities Act 1991. These are available at **Appendix 4**.
- 4.4 Under the London Local Authorities Act 1991 the borough may refuse to grant a licence on 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;
- 4.5 Legislation provides that where an applicant is aggrieved at the Council refusing to grant, or renew a licence or at any condition or restrictions imposed, the applicant may within twenty one days of being notified of the Council's refusal, appeal to a Magistrates Court. The Court may grant an order for the issue of a licence or may remove any condition or restriction imposed. Should the applicant still feel aggrieved at the Court's decision there is a right of appeal to the Crown Court.

5 Consultation

- 5.1 The application has been consulted on in accordance with the London Local Authorities Act 1991. This has included:
- 5.2 A site notice at the premises displayed by the applicant during the required period.
- 5.3 A public notice was placed in the Docklands and East London Advertiser on the 15th March 2018, by the applicant.
- 5.4 The following is a list of those also consulted in regards to the application:

The Police
The Fire Brigade
Environmental Health

6 Objections/Responses to the Consultation

- 6.1 Representations have been made objecting to the new application on the grounds of that the premises have been improperly conducted by the business 'Relax Studio' previously in place at the same address. The representations have been made available to the applicant and will also be made available to Members.
Representations have been made by the following.

Dr L Messias	Appendix 5 (Acknowledgement letter included)
Craig Hutchinson	Appendix 6 (Acknowledgement letter included)
Diana Hughes	Appendix 7 (Acknowledgement letter included)
Daron Pike	Appendix 8 (Acknowledgement letter included)
Zeta Azevedo	Appendix 9 (Acknowledgement letters included)

- 6.2 The Fire Brigade were consulted, please find below a summary of their comments.
- The Fire Brigade stated that the premises was not currently due for an inspection under the risk based re-inspection programme operated by this Authority
- 6.3 The police were consulted, please find below a summary of their comments.
- The police conducted the appropriate checks on the applicant and those listed as working at the establishment and stated that they could not find anything untoward that relates to the proposed use of the venue.
- 6.4 The Environmental Health Department were consulted , find below a summary of their comments
- The application was valid.
 - Supporting documents were enclosed, such as qualifications and passport photographs.

- The premises were checked during an inspection on 8th March 2018.
- PAT test (Portable Appliance Test) was not required as this is a new business; all portable electrical equipment is new.
- Licence will be issued subject to the treatment cards being in place and checked.

6.5 Local residents, please find below a summary of their comments.

- Likelihood of nuisance being caused
- Previous history of the premises being improperly conducted under the company name 'Relax Studio'.
- The content provided in the application is poorly presented and the identity of the applicant is not sufficiently transparent.
- Gunthorpe Street is a residential road and not suited to increased footfall of customers to this business or any other.
- Due to the congested nature of the premises there are doubts about storage and waste disposal with a potential fire hazard if not properly managed.
- The fire escape is often cluttered with rubbish or blocked and hence proper precautions against fire on the premises are not being taken.

7 Recommendations Following Consultation

7.1 Following objection from local residents, Members are asked to consider the representations when determining the new application.

8 Summary of Premises and Licence History

8.1 New Application for Massage and Special Treatment Licence received from Healthy Paradise Limited on 27th February 2018.

8.2 Application listed three therapists and qualifications of all therapists listed were checked.

9 Complaints and Enforcement History

9.1 The premises have received no complaints:

9.2 The premises has received the following visits and related correspondence from the Local Authority in the last 24 months:

Date	Authority	Nature of visit
08/03/2018	Licensing and Safety	<p>Inspection of premises for new special treatment licence. The person responsible for the management of the premises, Mr Gary Bugby and Chunhong Chen were both present. The following issues were noted at the time of the visit.</p> <ol style="list-style-type: none"> 1. No Price List. 2. No lidded bins

		3. No waste contract. The premises was due to be revisited to ensure that all outstanding issues had been resolved before issuing licence, as these issues have not been resolved.
08/03/2018	Licencing and Safety	Email correspondence to Mr Bugby confirming that listed therapist Christine/Thuy Nga Do did not suitable qualifications (NVQ Level 4) and was not allowed to carry out treatment at premises, if licence is issued, unless she gains the required qualifications.
13/03/2018	Licencing and Safety	Email correspondence to Mr Bugby requesting a complete version of the Massage and Special Treatment application submitted, section 1 and 3 of the original application was not completed.
13/03/2018	Planning	Email correspondence to Mr Gary Bugby at email detailing planning requirements and answering specific questions from Mr Bugby.

9.3 The premises has been subject to no enforcement action in the last 12 months:

10 Special Treatment Licenses and Determination

10.1 Members should consider the relevant legislation and Standard Conditions (see **Appendix 3** and **Appendix 4** respectively).

11 COMMENTS OF THE CHIEF FINANCE OFFICER

11.1 The Chief Finance Officer has been consulted on this report and has no additional comments to make.

12 LEGAL COMMENTS

12.1 This report is asking the Licensing Committee to consider an application for a new Special Treatments Licence at premises trading as Health and Beauty Centre at Unit 2, 1 Gunthorpe Street, London, E1 7RG. Such licences are granted in accordance with Part II of the London Local Authorities Act 1991 ("the Act "). Healthy Paradise Limited is the applicant for the licence.

12.2 There are five objectors to a grant of the licence, Dr L Messias, Craig Hutchinson, Diana Hughes, Daron Pike, Zeta Azevedo. They state that the premises have been improperly conducted by the business 'Relax Studio' previously in place at the same address. Section 8 of the Act sets out the various grounds where the council may refuse to grant a licence. This

includes at Section 8(3) of the Act, where the premises have been or are being improperly conducted.

- 12.3 The rules governing applications for Special Treatments Licences are contained with the introductory papers to this report. Members are also advised that these proceedings must comply with Article 6(1) of the European Convention of Human Rights. This is an 'absolute' right and provides that 'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.'
- 12.4 As to what is a 'fair hearing' before an 'independent and impartial tribunal', the rules of natural justice would apply. There are two principles to the rules of natural justice. Firstly, all parties must be given a chance to put their case and under conditions that do not put one party at a substantial disadvantage to the other party. This means that all parties should be given sufficient notice of the hearing. The applicant should have disclosure of the nature of the objections as well as who is objecting. This includes the right to cross-examine witnesses.
- 12.5 Secondly, a person who has an interest in a matter must be disqualified from considering it. In essence there can be no objective or subjective bias. In considering this both the European Courts and the English Courts have held that it is not necessary to show that there was actual bias but that a person could perceive that bias might have taken place. This means that it is not necessary to show that there was actual bias but that a reasonable person could perceive that bias might have taken place. In essence therefore, if a person from the outside looking in can perceive that bias might have taken place then there has been a breach of natural justice and therefore a breach of Article 6. Accordingly the Committee must be impartial both subjectively, the lack of actual bias, and objectively, the lack of appearance of bias.
- 12.6 If a Member therefore considers that they have an interest then they should declare it and not participate in the meeting. This would include retiring with Members when determining whether or not to grant the licence.
- 12.7 In relation to the lack of appearance of bias, the Committee should take care to base its decision on the circumstances prevailing at the premises under its current management.
- 12.8 The Committee meeting should be in public except that Members can retire in private when considering their decision. Once the decision has been reached then the decision is to be given in public and the Committee should also give reasons for its decision.

13 SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

13.1 There are no adverse implications.

14 RISK MANAGEMENT IMPLICATIONS

14.1. The Council will be at risk of legal challenge if its processes are not transparent and evidentially based.

15 CRIME AND DISORDER REDUCTION IMPLICATIONS

15.1 One of the key licensing objectives of the Council ensure that it does not grant licences to premises that are liable to be a source of crime and disorder. The Council supports and assists with crime and disorder reduction by controlling those who manage premises open to members of the public and imposing conditions on relevant premises licences.

16 Appendices

Appendix 1	A copy of original application for a new special treatment licence.
Appendix 2	A copy of revised application for a new special treatment licence, therapists' qualifications, electrical condition report and price list.
Appendix 3	A copy of the standard conditions for special treatment licences.
Appendix 4	Regulations for annual special treatment licences under section 10 (1) of the London Local Authorities Act 1991
Appendix 5	Representation made by Dr L Messias (Acknowledgement letter included)
Appendix 6	Representation made by Craig Hutchinson(Acknowledgement letter included)
Appendix 7	Representation made by Diana Hughes (Acknowledgement letter included)
Appendix 8	Representation made by Daron Pike(Acknowledgement letter included)
Appendix 9	Representation made by Zeta Azevedo(Acknowledgement letters included)

Local Government Act, 1972 Section 100D (As amended)

List of "Background Papers" used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- NONE