

Non-Executive Report of the:	
<p style="text-align: center;">Licensing Committee</p> <p style="text-align: center;">28th November 2018</p>	
Report of: David Tolley, Head of Environmental Health and Trading Standards Directorate of Place	Classification: Unrestricted
London Local Authorities Act 1991 Hearing to consider the objection to China Five Elements Limited, 35 Artillery Lane, E1 7LP renewing their Special Treatment Licence	

Originating Officer(s)	Charlotte Basten, Environmental Health Officer
Wards affected	Spitalfields and Banglatown

1. EXECUTIVE SUMMARY

Licence Holder:	China Five Elements Ltd
Name and Address of Premises:	China Five Elements 35 Artillery Lane London E1 7LP
Licence sought to refuse to renew:	Special Treatment Licence under The London Local Authorities Act 1991 Application to renew a Special Treatment Licence
Objectors:	Natalie Thompson, Principal Environmental Health Officer, Licensing and Safety Team

2. RECOMMENDATIONS

- 2.1 The Licensing Committee is recommended to consider the objection to the renewal of the special treatment licence and then adjudicate accordingly.

3. BACKGROUND

- 3.1 This is a report by the Licensing and Safety Team to object to the renewal of the special treatment licence for China Five Elements Limited trading as China Five Elements, 35 Artillery Lane, London, E1 7LP following evidence obtained that services of a sexual nature have been offered by the business at the premises. The business was prosecuted by the Council for breaches of

regulation 7 (B) of the Regulations made by the London Borough of Tower Hamlets under section 10 (1) of the London Local Authorities Act 1991 - for allowing the premises to be used by prostitutes, for soliciting or other immoral purposes and Condition 12 of the Massage and Special Treatment Licence-allowing female therapists to massage male clients without prior approval from the Council.

The matter of China Five Elements Limited was considered by the Stratford Magistrates Court on 27 September 2018 in accordance with the Single Justice Procedure. The Company pleaded guilty to the two charges of breaching its special treatment licence conditions. It was sentenced to pay a fine of £500, Victim surcharge of £50 and Costs of £1286.50.

- 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 A renewal of a special treatment licence may be refused under The London Local Authorities Act 1991 Section 8.
- 3.4 China Five Elements Ltd has applied to renew its special treatment licence which expired on the 30th of September 2018. A copy of the licence can be found at **Appendix 1**.

4. Legal Powers and Advice

- 4.1 Licences are granted subject to standard conditions.
- 4.2 Those Standard Conditions of the London Borough of Tower Hamlets were 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 2**.
- 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 as **Appendix 3**.
- 4.4 Under the London Local Authorities Act 1991 the borough may refuse to renew 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 license;
- (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 a licence, the applicant may within twenty one days of being notified of the Council's refusal appeal to a Magistrates Court. The Court may grant such an order as it sees fit.

4.6 An appeal by either party against the decision of the magistrates' court may be brought to the Crown Court.

4.7 Where any licence renewal is refused under section 13(5) (Enforcement of Part II) of this Act the licence shall be deemed to remain in force –

- (a) 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; and
- (b) where an appeal relating to the refusal of an application for such a renewal is successful until the licence is renewed by the borough council.

5. Grounds for Refusal of the renewal of the Licence

5.1 The Environmental Health Department has requested the hearing with the Licensing Committee to refuse to renew the licence. The report detailing the reasons for this can be found at **Appendix 4**. Find below a summary of the comments.

- China Five Elements Limited was prosecuted at Stratford Magistrates Court on 27 September 2018 in accordance with the Single Justice Procedure. The Company pleaded guilty to the two charges of breaching its special treatment licence conditions.
- The evidence relied on for this prosecution included a report from Netwatch Global an internet surveillance company whose investigation found that detailed reviews that indicated services of a sexual nature were provided at the premises, such as a “topless HE” (Happy Ending) “for £40” detailed in a review from the 14th April 2017.
- On the 13/04/2018 a test purchase was carried out by an external company contracted by the Council to check if services of a sexual nature were being offered at the premises. Services of a sexual nature were offered to the test purchaser. In his witness statement, the test purchaser stated that he entered the premises China Five Elements at approximately 14:00 on 13.04.2018 and paid for a £45 massage. A woman of Eastern European appearance conducted the massage and asked the test purchaser towards the end if he wanted anything more than a massage. The test purchaser enquired as to what this meant, to which she replied a “happy ending was £40”, “with breasts was £60” and “completely naked was £100”. The test purchaser declined these offers and left the premises.
- The director of the company Mr Wei Lin is responsible for the management of the business, the persons concerned in the conduct and management of the premises. He should be reasonably regarded as not being fit and proper persons to hold such a licence on basis of the guilty plea.
- During an inspection of the premises on the 12th October 2018 an officer overheard a male customer at the premises asking if the therapist was ‘Chinese or European’. The officer recalled online customer comments suggested staff of European origin were offering services of a sexual nature. Mr Lin answered with ‘European’.
- Of the eight therapists listed in the application form only 2 have provided evidence that they have the level of qualification required to carry out massage treatments in special treatment premises in Tower Hamlets
- Under The London Local Authorities Act 1991 the Council may refuse to renew a licence held by a person for grounds mentioned in Section 8 of the Act which include the licence holder not being a fit and proper person to hold a licence [section 8 (c)], the persons giving the

treatment not being suitably qualified [section 8 (d)], the premises being improperly conducted [section 8(e)].

6. Recommendations

- 6.1 Following the objection the renewal of the licence, Members are asked to consider the representation when determining whether to refuse to renew the licence.

7. Summary of Premises and Licence History

- 7.1 The premises were first issued with a Massage and Special Treatment Licence on the 20th of September 2012.

8. Complaints and Enforcement History

- 8.1 On the 13th April 2017 a petition containing 101 signatures of residents local to the Liverpool Street area was handed to the council by the Corporation of London. The petition requested that all massage premises in the area were investigated for compliance with their licence conditions. The premises run by China Five Elements Limited are in that area.

- 8.2 The premises has received the following visits from the Local Authority in the last 7 years:

Date	Authority	Nature of visit
20/19/2012	Licensing and Safety	Collection of Special treatment licence application form and cheque payment from Mr Wei.
14/11/2012	Licensing and Safety	Licence inspection. Several points required action. - No first aid box on site. -No accident book on site. -Therapists' details and qualifications not provided.
14/11/2013	Licensing and Safety	Licence Renewal Inspection. Several points required action. -Qualification and passport photos not provided for therapists. -Unsatisfactory medical history checks for acupuncture clients. - Portable electrical appliances not tested. - Clients not given verbal and written after care advice - Accident book not provided on the premises
06/10/2014	Licensing and Safety	Licence Renewal Inspection. Several points required action: - Client records not confidentially stored

		<ul style="list-style-type: none"> - No fire exit signs - No accident book
10/11/2015	Licensing and Safety	Visit following complaint about fleas in the premises. The business owner was not available.
20/11/2015	Licensing and Safety	Follow up visit to fleas complaint. No evidence of infestation was found.
26/11/2015	Licensing and Safety	<p>Licence Renewal inspection. Several Points required action.</p> <ul style="list-style-type: none"> - A large amount of lime scale deposit on shower head. - Infection control issues (towels not changed between clients) - Lack of adequate means of cleaning and disinfecting the premises - Client medical history checks not satisfactory - Lack of a suitable number of persons as adequate for rendering first aid
17/10/2016	Licensing and Safety	Licence Renewal Inspection. Issues of therapists passport photos and qualifications raised.
27/09/2017	Licensing and Safety	<p>Licence Renewal Inspection. Several points required action:</p> <ul style="list-style-type: none"> - Hepatitis B Vaccination for therapists - Lack of lidded bins - Alarm system linked to reception to be installed in the treatment room - Request for therapist passport photos - Expired therapist qualifications.
13/04/2018	Licensing and Safety	Test purchase. Services of a sexual nature offered.
12/10/2018	Licensing and Safety	<p>Licensing renewal visit</p> <p>A male customer observed requesting nationalities of masseuse.</p>

8.3 The licence holder was prosecuted under the London Local Authorities Act 1991. The case was considered by the Stratford Magistrates Court on 27 September 2018 in accordance with the Single Justice Procedure. The Company pleaded guilty to the two charges of breaching its special treatment licence conditions. It was sentenced as follows:

8.4 China Five Elements Limited was sentenced as follows;
 Fine: £500
 Costs: £1286.50
 Victim surcharge: £50

9. Special Treatment Licences and Determination

- 9.1 Members should consider the relevant legislation and Standard Conditions (see **Appendix 2** and **Appendix 3** respectively).

10. EQUALITIES IMPLICATIONS

- 10.1 There are no equalities implications.

11. OTHER STATUTORY IMPLICATIONS

- 11.1 Best Value implications: There are no best value implications.
- 11.2 Environmental considerations: There are no environmental implications.
- 11.3 Crime reduction: One of the key objectives of the Council is to ensure that it does not licence 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 licences. Illegal activity has been proven to occur at the premises.
- 11.4 Safeguarding: There are no proven safeguarding impacts; however premises that are managed in this way may employ underage persons or vulnerable adults. Therefore there may be a positive safeguarding impact.
- 11.5 Risk Management: The Council will be at risk of legal challenge if its processes are not transparent and evidentially based.

12. COMMENTS OF THE CHIEF FINANCE OFFICER

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

13. COMMENTS OF LEGAL SERVICES

- 13.1 Section 10 of the London Local Authorities Act 1991 enables the local authority to make regulations prescribing standard conditions applicable to all licenses for special treatment premises.
- 13.2 The London Borough of Tower Hamlets made such regulations which are produced as Appendix 3 to this report, and one of those regulations, 7(B) says, "The licensee shall ensure that no part of the premises are used by prostitutes, for soliciting or any other immoral purposes." Condition 6 says that all treatments shall be given only by persons approved by the Council or, provided that the written consent of the Council has been obtained, under the personal supervision of a person approved by the Council.

- 13.3 Section 9(2) of the London Local Authorities Act 1991 empowers the Council to revoke a special treatments licence for any of the reasons set out in section 8 of that Act.
- 13.4 Section 8 of that Act sets out a number of grounds under which a special treatments licence can be revoked by the Council, as set out in paragraph 4.4 of this report.
- 13.5 On 27th September 2018, Stratford Magistrates' Court dealt with a prosecution of the licence holder by the London Borough of Tower Hamlets for offering services of a sexual nature and for having masseuses working at the premises who were not approved by the Council's Licensing and Safety Team to work as masseuses.
- 13.6 The licence holder pleaded guilty, and was fined £500, also being ordered to pay costs of £1286.50 and a victim surcharge of £50.

14. **APPENDICES**

Appendix 1	A copy of the current special treatment licence.
Appendix 2	A copy of the standard conditions for special treatment licences.
Appendix 3	Regulations for annual special treatment licences under section 10 (1) of the London Local Authorities Act 1991
Appendix 4	Report from the Environmental Health Department
NAT.CFE.1	Special treatment licence renewal application and supporting documents.
NAT.CFE.2	Witness statement of first test purchase conducted on the 13/04/2018
NAT.CFE.3	Internet Searches
NAT.CFE.4	Single Justice Procedure Notice
NAT.CFE.5	List of directors from Companies House
NAT.CFE.6	Special treatment licence renewal application regarding licence in place at the time of the test purchase.

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

Officer contact details for documents:

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