

LONDON BOROUGH OF TOWER HAMLETS

RECORD OF THE DECISIONS OF THE LICENSING COMMITTEE

HELD AT 6.30 P.M. ON TUESDAY, 4 OCTOBER 2022

**THE COUNCIL CHAMBER, 1ST FLOOR, TOWN HALL, MULBERRY PLACE, 5
CLOVE CRESCENT, LONDON, E14 2BG**

Members Present:

Councillor Kamrul Hussain (Chair)

Councillor Leelu Ahmed (Member)
Councillor Saied Ahmed (Member)
Councillor Sabina Akhtar (Member)
Councillor Gulam Kibria Choudhury (Member)
Councillor Shubo Hussain (Member)
Councillor Ahmodul Kabir (Member)
Councillor Amin Rahman (Member)
Councillor Rebaka Sultana (Member)

Other Councillors Virtually Present:

Councillor Asma Begum (Member)

1. DECLARATIONS OF INTEREST

There were no declarations of interest made.

2. ITEMS FOR CONSIDERATION

**2.1 Hearing to consider refusal to grant a special treatment licence for
Vanilla Thai Massage, 1 Whites Row, London E1 7NF**

The Licensing Committee considered an objection to an application by Redbud (London) Ltd. for a new special treatment licence (MST licence) in respect of Vanilla Thai Massage, 1 White's Row, London, E1 ("the Premises"). The application had been objected by the Licensing Authority on the basis that there was a history of sexual services having been offered by therapists at the Premises.

Kamal Miah, on behalf of the Licensing Authority, explained his objection. The company had previously held an MST licence from March 2016 until March 2019. In March 2019 the company and its then-director were convicted of offences under s.14 of the London Local Authorities Act 1991 for breaches of

licence conditions, which included therapists offering sexual services. A renewal application had been refused in March 2019.

An MST licence had subsequently been issued to Cheung Lai Kwan. On 16th and 29th October 2021, test purchases were carried out at the Premises. On both occasions the therapist carrying out the massage had offered the test purchaser sexual services. Ms. Kwan was at this time the director of Redbud (London) Ltd. The licence was subsequently revoked at a Licensing Committee hearing on 14th July 2022. Given the history, he was of the view that the Premises had been or were improperly conducted, that the applicant could reasonably be regarded as not fit and proper to hold a licence, and that the applicant had been convicted of an offence under the 1991 Act in the five years immediately preceding the application.

Robert Sutherland addressed the Committee on behalf of Ms. Fu, the sole director of the company. There was no dispute as to the history. The reason the application had been made in the company name was that the company held the lease. Ms. Fu had taken over the company in April 2022 and she had done so for administrative convenience, since it would mean that the lease of the Premises did not need to change hands. She had no history with the Premises or the previous operators.

Although the company was the same, its controlling mind was not. He submitted that if the Committee had a concern then one option was to grant the licence for a short period of time, perhaps three months, to allow the authority to be satisfied as to compliance and also to allow for the licence to be transferred to Ms. Fu personally or into another company name. The Committee was told that she operated other premises without incident.

The Premises offered to change its name to Bamboo Thai, to dispel any association with the former operators. The therapists previously working at the Premises would not be employed and she would place signage to make clear that sexual services would not be on offer.

Despite the apparent change in ownership, the Committee's concerns were not assuaged. There was a history of sexual services at the Premises, as evidenced by test purchases. To date, the premises had been licensed to two entities; the company and to Ms. Kwan. Sexual services had been offered while under the management of both. Ms. Kwan was not a director of the company at the time of the first test purchase, having been appointed as director in December 2019. Given that one change in ownership or management had apparently not changed matters, the Committee was unable to give any real weight to Ms. Fu's assurances that she would not operate in the same way.

It also appeared to the Committee that Ms. Fu had not carried out sufficient due diligence before taking over the company. Had she done so, it might be that she would have been aware of the history and would not have taken over the Premises.

The Committee also considered there to be a risk of previous clients returning to the Premises in order to obtain sexual services.

There was no dispute that the company had been convicted of a criminal offence in March 2019. The Committee considered the suggestions of signage and a shorter period. The former gave no comfort since the offer of sexual services was already prohibited by standard conditions; the latter was not appropriate because it would not address the concerns of the previous history and it would not be a realistically long period in which to assess compliance. A longer period was considered but that imposed a burden on the Authority to monitor compliance. Ultimately, nothing that the Committee had heard gave it sufficient confidence that the Premises would be operated in strict compliance with the conditions having regard to the history.

The Committee was therefore satisfied that it was appropriate to refuse the application on the basis of section 8(c), 8(e), and 8(l), of the London Local Authorities Act 1991, namely that the persons concerned in the conduct or management of the premises could be reasonably regarded as not being fit and proper to hold such a licence, that the premises have been or are being improperly conducted, and that the applicant has within five years immediately preceding the application been convicted of an offence under the London Local Authorities Act 1991.

Accordingly, the Committee made a majority decision;

6 Against
1 For

RESOLVED

That the application for a special treatment licence for Redbud (London) Ltd. in respect of Vanilla Thai Massage, 1 White's Row, London, E1 7NF be **REFUSED**.

2.2 Hearing to consider refusal to grant a special treatment licence for Primo Remedy, 24 Wentworth Street, London E1 7TB

The Licensing Committee considered an objection to an application for a new special treatment licence (MST licence) made by Z&Z823 Ltd. in respect of Primo Remedy, 24 Wentworth Street, London, E1 7TB ("the Premises"). The objection had been made by the Licensing Authority on the basis of the history of the Premises.

Tom Lewis of the Licensing Authority addressed the Committee in respect of the objection. In March 2019 the company operating from the Premises, Primo Remedy Ltd., and its director, Hong Zhang, were convicted at Thames Magistrates' Court of an offence contrary to section 14(1) of the London Local Authorities Act 1991. The Premises had the benefit of an exemption; however, on the occasion in question, the therapist did not benefit from an exemption. Whilst the prosecution was for an offence of carrying on special treatments

without a licence where one was required, Mr. Lewis confirmed that the test purchase had referred to an offer of sexual services.

Ms. Zhang was advised of this offer of sexual services in July 2019. The Premises were treated as being exempt from licensing. Test purchases were carried out on 14th ad 29th October 2021 and the test purchasers state that they were offered sexual services. Mr. Lewis was also concerned that granting this application would mean it was more likely that sexual services would continue to be offered in the future. He also indicated that Ms. Zhang appeared to have some connection with the former operators.

Nigel Carter addressed the Committee on behalf of the applicant. He stated that the Licensing Authority's objection was the only objection. The first conviction related not to the offer of sexual services but to the fact that a non-exempt therapist was employed. He asserted that as there was no witness statement before the Committee to address that, there was no evidence of the allegation and it should be disregarded.

Mr. Carter then suggested that there was an irregularity in that a response from Kamal Miah dated 26th July 2022 was not included in the Committee papers. This, in his view, undermined the case for refusing the application. There was a test purchase on 14th October 2021 but this was not referred to in the representation. He stated it was significant that it was omitted although it was now included in the supplemental agenda. He stated that there was no evidence of an offer of sexual services and that it was mere supposition on the test purchaser's part.

With regard to the second test purchase, Mr. Carter asserted that it doesn't say what the hand gesture alluded to was and that it was said to be over the test purchaser's waist rather than over his genitals. He denied it was an offer of sexual service. Further, as the test purchaser was not present, it was hearsay and should be disregarded.

Mr. Carter suggested that it was "significant" that the test purchaser was the same on both occasions and that the test purchasers were lying.

In his concluding remarks, Mr. Carter told the Committee that Ms. Zhang held two MST licences elsewhere, both of which had been issued in the last six months and that she had never been prosecuted or reviewed. He also alleged that the use of a test purchaser was a Covert Human Intelligence Source (CHIS) and thus required authorisation under the Regulation of Investigatory Powers Act 2000 (RIPA) and that this also constituted a breach of the Council's Enforcement Policy.

Mr. Lewis confirmed that he did not say that the applicant was not fit and proper but that there were nonetheless concerns if the Premises were to continue to be operated. He agreed that the test purchase report of 14th October 2021 relied upon inference. However, the test purchase report of 29th October 2021 clearly did relate an incident, as did the statement in support of the prosecution in 2019.

The Committee is not a court and is not bound by strict rules of evidence. It is entitled to rely upon hearsay evidence and the weight it gives it is a matter for the Committee. By the same token, its function is not to determine guilt or innocence.

As to the incident on 14th October 2021, the Committee accepted that there was no direct offer of sexual services. If there was such an offer, it was highly subjective and the benefit of the doubt must be given to the applicant.

As to the incident on 29th October 2021, however, the Committee was satisfied that there was such an offer. The Committee found that the offer was entirely clear and that there was nothing to Mr. Carter's point that, because the purchaser was not more explicit in detailing the hand gesture or that the gesture was said to be over the waist, that there was some other rational explanation. This is particularly so, given that the reference was to a "handy" and a "happy ending."

Similarly, that the statement in respect of the prosecution in 2019 was not in the report pack did not mean that Mr. Lewis could not tell the Committee what it said. It would have been open to Mr. Carter to request that it be before the Committee, as was the case with the report of 14th October 2021. The Committee accepted that it was more likely than not that the statement said what Mr. Lewis said it did. Moreover, Ms. Zhang was advised of that offer in July 2019 and that was set out in written documentation given to her at that time.

The Committee was therefore satisfied that there was a history of sexual activity associated with the Premises and that it was reasonable to infer that there would have been other incidents. In addition, given that the incident of 29th October 2021 occurred when Ms. Zhang was operating or managing the Premises, it gives the Committee cause for concern that there may be such incidents in the future.

The Committee did not agree that the test purchases are in breach of RIPA or its own Enforcement Policy. It was advised that the test purchases did not amount to the use of a CHIS within the meaning of s.26(8) RIPA as there was no establishment or maintaining of a relationship which is a necessary prerequisite. Even if it were a breach of RIPA, however, the conduct was not of itself unlawful by virtue of s.80 nor did it affect the validity of the evidence.

Having regard to everything it had heard, the Committee was satisfied that the premises have been or are being improperly conducted and that it is appropriate to refuse the application for a licence pursuant to s.8(e) of the London Local Authorities Act 1991.

Accordingly, the Committee unanimously;

RESOLVED

That the application for a special treatment licence for Primo Remedy, 24 Wentworth Street, London E1 7TB be **REFUSED**.

2.3 Hearing to consider refusal to grant a special treatment licence for Rain Therapy Centre, 56 Skylines Village, London E14 9TS

The Licensing Committee considered an objection to an application for a new special treatment licence (MST licence) by Human Health Ltd. in respect of premises at 56 Skylines Village, London, E14 9TS. The objection referred to a history of sexual services being offered at the Premises.

The Committee heard from Lekan Olomo. The Premises had come to the Council's attention in September 2018 when they were found to be carrying on special treatments without a licence. A test purchase later that month resulted in the purchaser being offered sexual services.

An application was submitted for an MST licence and this was refused by the Committee in November 2018. The Premises changed its name to Rain Therapy and was operated by a company called Acu & Herbs Ltd. They operated from July 2020 to July 2022 under an MST licence. However, two test purchases on 14th and 29th October 2021 resulted in sexual services being offered. As a result, the company did not apply to renew the licence.

That company and its director were each convicted on 26th July 2022 of an offence under the London Local Authorities Act 1991, arising from those test purchases.

The consequence is that there is a pattern and a history of sexual services being offered. Given that only massage was sought in this application, Mr. Olomo considered it likely that there would be further offences.

Christopher Adiole addressed the Committee on behalf of the applicant. He explained that she had recently lost her husband and had not been as focused as she might otherwise have been on this application. The allegations did not relate to her, however. She had taken over the business in February 2022, at which time there was a valid licence. She had spoken to an officer when he had visited and had been told there were no problems. Had she been informed otherwise, she would not have purchased the Premises.

Mr. Adiole stated that his client had no convictions, that she was a qualified therapist, and that she had not retained any of the previous therapists. She had rebranded the service. He further submitted that the authority had a precedent of granting licences even where there had been a history and that his client should be given an opportunity.

Officers confirmed that there had been no further test purchases to date. The Legal Adviser asked Mr. Olomo if he could shed any further light on the visit in February 2022. Mr. Olomo confirmed he had visited with a colleague on 9th February 2022. Ms. Wang had been present. There was a concern about non-approved therapists working there and he had alluded to there having been some problems. Mr. Olomo told the Committee that Ms. Wang advised she had bought the business three days earlier.

The Committee accepted that Ms. Wang did not appear to have been involved with the Premises previously. However, the history showed a pattern of sexual services being offered and it was reasonable to infer that others would have occurred. That none of the former therapists would be employed would not stop others offering similar services.

Whilst the Committee noted the suggestion that officers misled the applicant into buying the business, Members accepted Mr. Olomo's account of the visit of 9th February 2022, at which point Ms. Wang told him that the business had already been purchased.

Whether or not the Authority has previously granted licences where there had been a prior history does not set any precedent. Each application must be decided on its own merits. There was a history with this Premises and the Committee was not satisfied that this would change under the applicant's management.

Having regard to the representations from the parties, the Committee was satisfied that the Premises have been or are being improperly conducted and that refusal of the licence was appropriate under s.8(e) of the London Local Authorities Act 1991.

Accordingly, the Committee made a majority decision;

5 Against

4 For

RESOLVED

That the application for a special treatment licence for Human Health Ltd. in respect of Rain Therapy, 56 Skylines Village, London E14 9TS be **REFUSED**.

The meeting ended at 8.10 p.m.