

LONDON BOROUGH OF TOWER HAMLETS

MINUTES OF THE LICENSING COMMITTEE

HELD AT 6.40 P.M. ON THURSDAY, 26 OCTOBER 2023

COUNCIL CHAMBER - TOWN HALL, WHITECHAPEL

Members Present in Person:

Councillor Faroque Ahmed Whitechapel Ward
Councillor Suluk Ahmed
Councillor Gulam Kibria
Choudhury
Councillor Abu Chowdhury
Councillor Marc Francis
Councillor Iqbal Hossain
Councillor Shahaveer Shubo
Hussain
Councillor Rebaka Sultana

Apologies:

Councillor Peter Golds
Councillor Kabir Hussain (Cabinet Member for Environment and the Climate
Emergency)
Councillor Ahmodul Kabir

Jonathan Melnick Principal Enforcement Lawyer

Tom Lewis Team Leader Licensing Officer

James Doherty Health & Safety Officer

Farzana Chowdhury Health & Safety Officer
Democratic Services Officer (Committees)

1. DECLARATIONS OF INTEREST

There were no declarations on interest.

2. ITEMS FOR CONSIDERATION

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

The Committee considered an application by Cuihan Fu for a special treatment licence to be held in respect of Lily Thai Spa, 1 Whites Row, London, E1 (“the Premises”). The application sought authorisation for the provision of massage and manicure.

The application was opposed by the Licensing Authority. This was based on the history of contraventions of the licence held in respect of the Premises previously and on the fact that a recent inspection showed the Premises to be open and offering special treatments whilst unlicensed.

Applicant

The Committee heard from Ms. Fu, who was assisted by an interpreter. She spoke very briefly to the application and said she was nothing to do with the previous owners. She held the lease until 2027 and had to pay the rent and business rates.

During questions from Members, she said that staff had been told that sexual services were not to be offered, that customers would be made aware, and that she would dismiss any staff member who did offer such services.

She was asked if she understood the concerns that the licence had been revoked and, since then, the Premises had been found to have been providing or offering unlicensed special treatments. She said that she needed to keep the Premises open as she had bills to pay and she had no choice. She had not been made aware of the problems at the Premises when she purchased the business in April 2022; she only found out about the problems subsequently. She had tried to dispose of the business but had been unable to do so. She admitted that the Premises had been open “for a few weeks” after the application had been made. Objections had been received and she had then closed.

Ms. Fu also asserted that she had tried to meet with officers but that they had refused to do so.

The Committee explored further into the applicant’s presentation which prompted further questioning which were answered and responded to.

Licensing Authority

James Doherty addressed the Committee on behalf of the Licensing Authority. He said he had visited on three occasions and on each occasion the Premises had been open. On the second and third visits, staff had confirmed that special treatment was being offered.

Mr. Doherty denied the allegation of refusing to meet with Ms. Fu but explained to the Committee that the history and the current contraventions

meant that there was nothing that could be said to allay his concerns. He confirmed that the visits took place in August 2023 and on 11th September and 19th October 2023.

Mr Doherty sought the Committee to refuse the grant of a special treatment licence in respect of Lilly Thai Spa Massage 1 Whites Row, London E1 7NF.

Decision

The Committee accepted that Ms. Fu was not involved with the Premises when sexual services were offered in October 2021. Nor was she involved in 2019 when the company of which she is now a director was convicted of similar offences. However, there is nonetheless a long history of sexual services being offered at these Premises and that changes in management have not addressed that.

Whilst Ms. Fu stated that she needed to pay bills and that she could not dispose of the lease, it was not clear to the Committee what steps, if any, had been taken to do so. There was no evidence, for example, of attempts to sell the Premises nor of any steps taken to perhaps change the business. Nor was there evidence of any attempts to surrender the lease.

However, even if it was the case that Ms. Fu had done what she could, the fact remained that she made a decision to open in the knowledge that she had no licence to do so. She was aware that her application in October 2022 had been refused, in part because of the history. Having made this application and knowing that it had not been granted, Ms. Fu made the decision to open and offer special treatments whilst unlicensed. Mr. Doherty visited on three occasions between August and mid-October. The Committee inferred that if the Premises were open on each of those three occasions, it would have been open at other times during that period. That is not something that the Committee considers a responsible potential licensee would do and it did not give the Committee any confidence at all, if the licence were to be granted, that Ms. Fu would comply with the licence conditions or ensure that the masseuses would not offer sexual services.

The Committee did consider whether it could grant the licence with respect to the provision of manicure only. However, given Ms. Fu's decision to operate whilst unlicensed and to do so knowing that she was unlicensed, the Committee did not consider it could have any faith in her to comply with the conditions relevant to such treatment.

The Committee was satisfied that Ms. Fu had shown that she was not a fit and proper person to be concerned in the conduct or management of the Premises and that the Premises have been improperly conducted and the application is therefore refused pursuant to s.8(c) and (e) of the London Local Authorities Act 1991.

2.2 Hearing to consider refusal to grant a special treatment licence for Thai Garden Massage Therapy, 35 Artillery Lane, London E1 7LP

The Committee considered an application by Thai Garden Ltd. for a new special treatment licence to be held in respect of Thai Garden Massage Therapy, 35 Artillery Lane, London, E1 7LP (“the Premises”). The application sought authorisation for the provision of massage only. One objection had been received against the application. This was from the Licensing Authority on the basis of the history of the Premises, which included test purchases resulting in the offer of sexual services by masseuses, and that the Premises appeared to have been carrying on or offering special treatment whilst the application was awaiting determination.

Applicant

The Committee heard from Chanakan Ayriss and her husband on behalf of the company. Thai Garden Massage Therapy 35 Artillery Lane, London E1 7LP.

They explained that they had no connection with the previous owners and had spent around £50,000.00 refurbishing the Premises. All staff were qualified and no-one who had worked previously at the Premises was employed there. The Committee was also informed that they managed a premises in Bishops Stortford and had an unblemished record and good reviews, particularly from medical practitioners and other professionals.

Ms. Ayriss understood the concerns of the objectors and offered to install frosted glass panes or doors to the treatment rooms so that it would be possible to ensure that nothing inappropriate took place whilst still maintaining privacy. Beyond that, they could not see what else could reasonably be done to prevent sexual services being offered. The applicant asserted that it was not fair to judge them on the history of poor operators who were nothing to do with them.

It was accepted that the Premises had been open whilst the application was pending, and services had been offered. The officer, Mr. Mehboob Ahmed, had told them to close down and so they did. This was around 1st September 2023.

Mr. Ayriss then explained that one staff member was a registered member of the CThA (the Complementary Therapists Association) and that there was an exemption for such therapists.

The Committee’s legal adviser did some research. He informed the Committee that their website stated the following:

*“If you are performing treatments within all the London Boroughs and most other parts of the country you are **required** to have a Special Treatment License.*

*In recognition of the quality of CThA Members, we have been able to negotiate an exemption from this license for most Councils. This exemption could **save** you over **£1000** per year. **The yearly CThA membership fee is only £60.***

There are a number of treatments that are classified as special treatments, but the main ones are Massage, Aromatherapy and Reflexology. You will need to have a licence to perform these treatments in all London Boroughs and in many council run areas in the UK unless you are a CThA Member.”

The papers in the report pack showed that Ms. Ayriss herself was a member of the CThA. Mr. Lewis, the Licensing Manager, checked the Council's records and confirmed that the Council did apply an exemption for the CThA. Mr. Lewis confirmed that the usual process was that the person concerned would notify the Authority of their exemption. The Committee was given legal advice that this meant that Ms. Ayriss herself was exempt from the need for a licence but if the Premises was employing non-CThA masseuses, they would still need a licence. Ms. Ayriss had confirmed that the Premises had been closed since the beginning of September 2023, when the officer had last visited. She also confirmed that she had not been present at that time as she was abroad caring for her ill mother.

Members asked Mr. Ahmed if this information affected the Authority's position in any way.

Mr Ahmed made his presentation to the Committee maintained that the Premises had a history of offering sexual services and that there had been breaches during the application period. When he had visited, there were four members of staff present, all wearing uniform. He had asked if massages were being given, which was confirmed, and he told them to stop until such time as they had a licence. Mr Ahmed sought the committee to refuse the grant of a special treatment licence for Tai Garden Massage Therapy 35 Artillery LANE, London E1 7LP.

Decision

The Committee took account of the history of the Premises in reaching its decision. It noted too, however, that these were not linked to the applicant. It also took account of the alleged breaches during the application period. These were not as clear-cut as first seemed. Ms. Ayriss herself did not need a licence and this meant that the Premises did not need to close during the application period as long as she herself was carrying out the treatments. The advice to close was therefore not entirely correct. It was accepted that she was abroad in September 2023 when the last visit took place and that was therefore technically a breach. However, it was possible, given the circumstances and Ms. Ayriss's exemption, that this was a genuine misunderstanding as to the law and not a deliberate breach. She did close the Premises when told to do so, which suggests that there will be future compliance.

The concern for some members is whether the problems of the past will nonetheless recur. For that reason, the Committee determined to grant the application and issue a licence but that this would be for the period of six months rather than one year, in order to ensure that the Premises are managed properly and do not give rise to issues such as sexual services being offered. In addition, the Committee imposes the following two non-standard conditions, which will be additional to the standard conditions, and these are:

- A) All treatment room doors shall be fitted with frosted glass. This must allow the treatment area to be seen whilst maintaining the privacy and dignity of the customer.
- B) The glass to the treatment room doors must not be covered in any way by any means at any time that authorised special treatment is being carried out.

The meeting ended at 8.10 p.m.

Chair, Councillor Ana Miah
Licensing Committee