

Non-Executive Report of the: Licensing Committee 28 th November 2018	
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 Health Spa Limited, Unit 1-2 Horizon Building, 15 Hertsmere Road, London, E14 4AW renewing their Special Treatment Licence	

Originating Officer(s)	Charlotte Basten, Environmental Health Officer
Wards affected	Canary Wharf

1. EXECUTIVE SUMMARY

Licence Holder: **China Health Spa Ltd**

Name and Address of Premises: **China Health Spa
Unit 1-2 Horizon Building
15 Hertsmere Road
London
E14 4AW**

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 Health Spa Limited trading as China Health Spa, Unit 1-2 Horizon Building, 15 Hertsmere Road, London, E14 4AW following evidence obtained that services of a sexual nature are being offered by the business at the premises.
- 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. A special treatment licence renewal may be refused under The London Local Authorities Act 1991 Section 9 (2).

- 3.3 A renewal of a special treatment licence may be refused under The London Local Authorities Act 1991 Section 8.
- 3.4 China Health Spa Ltd has applied to renew their Special Treatment licence which expired on the 1st of October 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 to renew a licence, the applicant may within twenty one days of being notified of the Council's decision, 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 Licence

5.1 The Environmental Health Department has requested the hearing by 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.

- On the 23rd March 2018, a male test purchaser visited China Health Spa as a customer to conduct a test purchase. The test purchaser paid £50 for a Swedish massage. The female masseuse instructed him to take all of his clothes off and had only a small towel to cover his buttocks. During the massage, the masseuse had taken the towel off to massage the buttocks and occasionally touched his private parts. The masseuse behaved in a manner which could be said to be sexually suggestive.,

- On the 21st May 2018, a second test purchase visit was undertaken at the premises. The male test purchaser opted to pay £45 cash for a deep tissue massage. During the massage, the female masseuse offered him 'extra services'. Towards the end of the massage, the masseuse focused on his buttocks and asked if there was anything else that he wanted. When asked what she meant by this, she responded that her prices started at £40. When asked again what this would entail, she stated that it would be for 'hand relief' with 'teasing' and that she did not offer 'mouth relief'."
- An alleged former employee of China Health Spa who says they worked as a masseuse in the premises in 2016 and requested to remain anonymous advised an Officer in the licensing and safety team that this business was not run in a professional manner and has written a statement to this effect. Members need to consider how much weight they give to the alleged ex employee's statement because it is unsigned. The employee wished to remain anonymous as she was afraid of repercussions.
- The persons concerned in the conduct and management of the premises used for special treatment could be reasonably regarded as not being fit and proper persons to hold such a licence. (Section 8c) as they were in control of the business at the time of the test purchases.

6. Recommendations

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

7. Summary of Premises and Licence History

- 7.1 China Health Spa Limited was first issued a special treatment licence on the 5th of December 2011.

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. China Health Spa which is not local to this area was included in the investigation due to comments received from an alleged former employee and also from a Tower Hamlets Council employee.
- 8.2 The premises has received the following visits from the Local Authority in the last 24 months:

Date	Authority	Nature of visit
01/09/2011	Licensing and Safety	Licence inspection. Several points required action. - No accident book on site. -Portable Electrical Equipment not tested
09/09/2011	Smoke Free	Smoke free complaint visit
22/11/2012	Licensing and Safety	Licence inspection. Several points required action. -No accident book on site. - Portable Appliance Test Certificate not provided -Therapists' details and qualifications not provided/ satisfactory - Expiry of professional liability insurance - No gloves available for use Items stored in electrical cupboard - Sharps containers not adequately disposed of.
13/11/2013	Licensing and Safety	Licence Renewal Inspection. Several points required action. -Unsatisfactory medical history checks for clients. - Loose flooring in massage room presenting a slips and trips hazard - Lack of Accident book
22/10/2014	Licensing and Safety	Licence Renewal Inspection. Several points required action: - Expiry of therapists qualification certificate - Shower not flushed on a weekly basis
03/11/2015	Licensing and Safety	Licence Renewal Inspection. No issues found.
11/10/2016	Licensing and Safety	Licence Renewal Inspection. The following required action: - The sharps box in the acupuncture room was full
27/10/2017	Licensing and Safety	Licence Renewal inspection. Several Points required action. - Requirement for therapist qualification for Facials - Lino floor joint separated in the Acupuncture room , potential tripping hazard - Lack of suitable lidded bins in every treatment room

		<ul style="list-style-type: none"> - Fire extinguishers not serviced and not wall mounted - A clean lidded container not being on hand to store sterile nail tools - A no smoking sign not provided at the entrance of the premises
23/03/2018	Licensing and Safety	Test purchase. Services of a sexual nature were not offered, but there was sexually suggestive behaviour by the masseuse during the test purchase.
21/05/2018	Licensing and Safety	Test purchase. Services of a sexual nature were offered to the test purchaser at the time of the visit.
23/05/2018	Licensing and Safety	Test purchase. Services of a sexual nature not offered.
29/10/2018	Licensing and Safety	Licensing renewal visit- No hot water
5/11/2018	Licensing and Safety	Revisit to check – hot water provided

8.3 The licence holder has been referred to the Council's Legal team for prosecution under the London Local Authorities Act 1991.

9. Special Treatment Licences and Determination

9.1 Members should consider the Standard conditions and relevant legislation (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.

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 2 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."

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 This matter is currently the subject of a pending prosecution, with an initial court hearing due on 13th December 2018. Although the matter has not been concluded at court, Members may still consider the application to revoke the licence if satisfied it is more probable than not that on 21st May 2018, services of a sexual nature were offered by a masseuse employed at the premises, contravening regulation 7 (B) above of the London Borough of Tower Hamlets' regulations regarding the operation of a special treatment licence.

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.CHS.1	Special treatment licence renewal application and supporting documents
NAT.CHS.2	Statement from an alleged former employee of China Health

	Spa
NAT.CHS.3	Witness statement of test purchase conducted on 23/3/18
NAT.CHS.4	Witness statement of test purchase conducted on 21/5/18
NAT.CHS.5	Court summons
NAT.CHS.6	List of directors from Companies House
NAT.CHS.7	List of persons with significant control of the company
NAT.CHS.8	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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