

London Borough of Islington

Licensing Regulatory Committee - 4 February 2019

Non-confidential minutes of the meeting of the Licensing Regulatory Committee held at the Town Hall, Upper Street, N1 2UD, on 4 February 2019 at 4.00 pm.

Present: **Councillors:** Nurullah Turan (Chair), Michelline Safi-Ngongo
(Vice-Chair) and Kat Fletcher

Councillor Nurullah Turan in the Chair

7 **APOLOGIES FOR ABSENCE (Item 1)**

Received from Councillor Alice Clarke-Perry.

8 **DECLARATION OF SUBSTITUTE MEMBERS (Item 2)**

None.

9 **DECLARATIONS OF INTEREST (Item 3)**

None.

10 **MINUTES OF THE PREVIOUS MEETING (Item 5)**

RESOLVED:

That the minutes of the meeting held on 4 July 2018 be confirmed as an accurate record of proceedings and the Chair be authorised to sign them.

11 **RENEWAL OF SPECIAL TREATMENT LICENCE APPLICATION - LONDON GRACE, 35 CAMDEN PASSAGE, N1 8EA (Item 1)**

In his introduction and welcome to the meeting, the Chair informed all present that Committee members had received a number of written submissions, both from the applicant and objectors, since the agenda had been published, all of which had been read by Committee members.

The Licensing Officer reported that the application for the renewal of a Special Treatment Licence for this premises had received objections from local residents. The key issue appeared to be whether the premises was suitable for operation as a nail treatment premises. An extra recommendation had been proposed in the officer's report that the Environmental Health Officer had to be satisfied with the use of the premises before the special treatments could continue. Further tests had been carried out by Environmental Health since the agenda had been produced and a Fire Officer's report had been produced, both of which had been circulated. An officer from the Council's Planning Team had been invited to attend this meeting to clarify planning issues associated with the premises.

The Planning Enforcement Officer reported that the lawful use of the ground floor of the premises was A1 retail use and that a nail bar constituted a change of use. Following a warning letter from the Council, the nail bar on the ground floor had ceased and the basement was now being used to provide nail treatments. The ground floor was used for retail purposes. A planning application would need to be submitted for the change of use to mixed use.

Members noted the report of the Planning Enforcement Officer but confirmed that the Committee had no Planning powers, nor any power over the alcohol licence, nor powers over noise nuisance, which were all matters for other committees of the Council.

The Environmental Health Manager gave a timeline of her interaction with London Grace since complaints about odour and noise nuisance were first received in October 2017 from residents living above the London Grace premises. This included a number of visits to the premises by the Licensing Team and Out of Hours Response and Patrol Team. Odour nuisance had been witnessed on many of these occasions. Environmental Health Officers had also carried out a smoke test at the premises, which confirmed that some smoke had travelled directly from the basement of London Grace into the hallway of the residential premises upstairs, via the ceiling space and gas meter cupboard. Following the service of an abatement notice on London Grace in June 2018, she noted that London Grace had carried out some remedial works, including extra ventilation, with extractor fans running 24 hours a day. However, further remedial works in relation to fire separation works had been identified which were the responsibility of the freeholder, residential leaseholder and the commercial leaseholder. As a result of the service of an Environmental Health notice, she noted that London Grace had installed a second extractor system in the basement of the premises, reinstated the ceiling in the basement area and temporarily sealed the gas meter cupboard in the basement.

Having reviewed the nuisance diary sheets, the Environmental Health Officer noted that there had been no complaints recorded since 25 January 2019. She also noted that the extractor in the basement of the premises did not work as efficiently as that on the ground floor. A second smoke test carried out at the end of January 2019 resulted in no smoke travelling between the two premises. With regard to outstanding works, the Environmental Health Officer suggested that a local exhaust ventilation system might work better than a single point extractor at high level. There was an outstanding issue for the freeholder and the leaseholder on the matter of the sealing of the gas meter cupboard.

The applicant's representative noted that, since works had been undertaken by London Grace prior to Christmas 2018, including the installation of 24 hour extractor fans, there had been no complaints for three weeks. The Environmental Health Officer said that there had been no call-outs since 11 January 2018. The applicant's representative noted that Environmental Health's Out of Hours Team had been called out on 27 occasions. On 9 of those occasions, the Environmental Health Officers attending the premises had declared a nuisance, though not on the other

occasions. He questioned the training and expertise of the officers called out to attend the calls of nuisance to the Environmental Health Team. In response, the Environmental Health Officer said that the officers attending had smelt acetone and nail varnish at the entrance and hallway to the premises. To constitute a nuisance, officers would have been seeking odours in the living room, kitchen or bedroom of the residential premises upstairs, which could be the cause of headaches to the residents. The Environmental Health Officer stated that she did not manage the Out of Hours Team, but knew that the officers would have been trained in witnessing causes of nuisance, such as odours, at the source.

Referring to paragraph 18 of the witness statement (31 January 2019) of one of the objectors, the applicant's representative noted that the objector had stated that she had not been made aware of noise and odour testing carried out at London Grace by Environmental Health in November 2018, until after the event, as she had been away from her flat. An email from Environmental Health Team on 30 November 2018 informed the objector that the tests had taken place on the London Grace premises and that it could also be extended to the objector's residential premises above. The applicant's representative noted that the notification from Environmental Health had been received a fortnight after the actual test. The Environmental Health Officer stated that she had visited the business premises to obtain a method statement. The applicant's representative also referred to a statement from the complainant, submitted as part of a Freedom of Information request, which comprised entries from the Environmental Health log. He noted that names had been crossed out, but not the dates and times of incidents recorded by the complainant. He further noted that emails to London Grace had been disclosed, though not the entire chain of email exchanges.

He further noted that London Grace had commissioned a report from a noise consultant, had carried out remedial works including the installation of extractor fans and had done everything asked of them. The Environmental Health Officer confirmed that most of the work suggested to London Grace had been carried out. The applicant's representative referred to the Habia Code of Practice for Nail Services, which recommended the reduction of dust through air filtration of extraction at each nail desk. The Environmental Health Officer noted that the nail treatment work stations were at the back of the room and therefore not near to the main extractor fan, which was at the front of the room.

The complainants' representative expressed a hope that the new ventilation system, operating 24 hours a day, would be effective in clearing odours from his clients' premises. He asked the Environmental Health Officer whether she had been present at a meeting in the previous week where the nature of the second smoke test had been discussed and it had been noted that the basement extraction system had not cleared the smoke from the area as effectively as the test on the ground floor in June. On this second occasion, additional ventilation had only been achieved by opening all windows and doors to clear smoke. The complainants' representative suggested that the slowness of the smoke clearing could be the reason why it had not passed through to the residential premises on that occasion, or it could be because additional ventilation was needed. He noted that the

residential premises above were unoccupied at that time and the fact that no odour nuisance reports had been submitted was not indicative of no issues. The Environmental Health Officer stated that London Grace would need to take up the issues raised by the smoke tests with the installation company. She added that Environmental Health had written to the residents of the upstairs premises to advise them of the smoke trial and were not aware that the premises was unoccupied at that time. The complainants' representative pointed out that the residents had not received notification of the smoke test until three days after the trial commenced. He asked the Environmental Health Officer whether the gas meter needed to be moved and the cupboard sealed to prevent any further odour leaks. The Environmental Health Officer replied that there was no guarantee that the nuisance would cease and that the gas meter cupboard was clearly letting smoke through. She thought that the cupboard would have to come out. The complainants' representative speculated that, even if the gas meter was moved, there could still be a risk of odour nuisance in the future.

The applicant's representative made the case for the application, stating that noise was not an issue at the premises and noting that planning and other licensing issues were not for this Committee. The issue seemed to be whether this building was suitable as a nail bar. Although there had been issues in the past, the owners did not offer nail treatments that were particularly odorous. He referred to one of the staff who had worked for a year at the premises who could not recall any occasions when customers or staff had complained of odours, or suffered irritations. The residents living above had not visited or telephoned to complain. There had been no quantitative testing of the odours. The operators of London Grace were responsible operators, who managed eight other premises, all of which were situated under residential properties and not all of which were new build. He maintained that the operators had done all they could to deal with the issues. Their gas meter had been in the same cupboard as that of the residential premises and they had moved it and spend thousands of pounds on that and a report from noise experts. He noted that they had installed a false ceiling in the premises to close off light through to the floors of the premises above. The premises' lease gave a right to the landlord to access the gas meter and they could not move it unless the landlord and tenant agreed. The gas isolation switch for the premises and the residential property upstairs was located in the basement cupboard. He suggested that there were no obvious pathways for odour to travel from the basement of London Grace, where treatments were carried out, up to the residential premises above. He referred to a noise report and an odour report, commissioned by London Grace, and produced by Mr Michael Bull, who was in attendance as one of his witnesses, of Ove Arup and Partners Ltd. Mr Bull had agreed with London Grace that he would give his opinion on matters relating to odours, though his expertise was as a noise expert. Mr Bull had described the situation at the building as a unique situation.

The complainants' representative asked Mr Bull how many occasions he had visited the premises. Mr Bull said that he had visited the London Grace premises on four occasions but had not visited the upstairs premises. Mr Bull added that he could look at the interior and the structure of the business premises being run by London

Grace to get a good idea of the pathway of the odour. He maintained that there had to be a reason why air was being pushed out of the basement and into the residential property above. He queried whether the extractor fan in the residents' kitchen could be acting as a pressure-sucking fan, taking air from the business premises below? Mr Bull stated that there would not be much of a pressure difference unless the kitchen extractor fan was huge, as the extractor fan in the basement was of a substantial size.

A member of the Committee asked Mr Bull whether he had been involved when the operator for London Grace had contacted the Council's Environmental Health Team in relation to a reported leak from the dry cleaners to the rear of London Grace. This had been looked at as a potential source earlier by Environmental Health but was not considered to be the source of any odour leaks.

The complainants' representative asked Mr Bull about the likely amount of odour when nail varnish remover was used. Mr Bull said that although both nail polish and shellac contained solvents, the use of nail varnish remover resulted in the highest rates of solvent release and consequently had the highest potential for odour to be produced. Mr Bull was also asked whether the number of people receiving treatments in London Grace had been assessed, given that there could be parties of up to 20 people. Mr Bull confirmed that he had taken this into account. One of the operators of the premises stated that if a party group attended, only four had nail treatments.

A member of the Committee said that it appeared that the operators of the premises had carried out as much remedial work as they could, apart from the suggested local exhaust ventilation units at each work desk, as per Habia guidance. She asked whether the nail technicians started work at the table closest to the ventilation unit and whether they would consider moving the tables closer to the ventilation unit? She suggested that the premises operators might consider the installation of the local exhaust ventilation units as a gesture of goodwill. One of the premises operators said that, if there were four clients, it was difficult to move people in front of the extractor fan. The premises operator said that they had already spent thousands of pounds to carry out the remedial works to date and that the Habia guidance was only advisory. She pointed out that, even if local exhaust ventilation units were installed, it would not be possible to determine where those exhaust fumes would travel.

The Environmental Health Officer suggested that, rather than starting at table 1,2 and 3 etc, the operators might consider siting the tables involving acetone treatments near to the ventilation fan.

The complainants' representative invited one of the residents of the flat above London Grace to describe the impacts of the odour and noise nuisance on her. The resident said that the nuisance persisted every day, for most of the day. Her life was complete misery and she said that she could not face another year of this nuisance. In response to questions from members, she confirmed that she had lived at the flat above London Grace for ten years. Previous to London Grace, the

retail property downstairs had been a shoe and retail outlet. She had first realised that there would be problems with the new business, London Grace, throughout refurbishment of the premises, when she thought she could smell paint. However, she could not understand why there was a strong odour in the hallway. Visitors to her home would always comment on the odour. When she had called the Out of Hours Team to witness noise nuisance, the staff at London Grace had laughed at her. She added that, in addition to the extractor fan above the cooker in her kitchen, there was a window. In response to a question from the applicant's representative, she confirmed that she had had no cause for complaint against the premises since 11 January 2019.

The complainants' representative read a closing statement (copies of which were circulated) urging the Committee to refuse the renewal application. His statement covered aspects such as the likelihood of future nuisance, mitigation measures to stop pathways for odour to travel into the flat above and their likely ineffectiveness and the trustworthiness of the applicants. He maintained that there were no viable and effective measures available that would satisfactorily solve the odour problem created by London Grace's business.

In summary, the applicant's representative said that, although it was not an issue for this Committee, there had been no noise complaints about the premises for the past year. He drew attention to the report on noise and odour produced by Mr Bull, an expert in these matters, which concluded that there were no obvious pathways for odorous materials to pass from the shop into the flat above, apart from minor gaps in the building fabric. The report indicated other solvents were used in the nail treatment premises, in addition to acetone, which caused odour. All of the solvents used were heavier than air. The kitchen extractor fan in the complainants' premises above could not possibly suck air from the shop into the flat. The active ventilation fans in the shop premises meant that negative pressure was dominant in the premises so air should be drawn from the flat into the shop premises rather than vice versa. He referred to paragraph 39 of the closing statement of the complainants' representative and pointed out that the gas meter referred to did not belong to London Grace. The isolating valve for the gas for the residential premises was located in the basement of the London Grace premises. He queried the need for any further smoke tests.

In addition, the applicant's representative confirmed that the licence holder for London Grace would agree to an additional condition suggested in paragraph 39.d of the closing statement of the complainant's representative, that the extractor fan ventilation system must be operated 24/7 and maintained as such.

He suggested that it might sometimes be better not to let a complainant know in advance that any sort of test was planned. He noted that there had been no complaints during the trial period. Referring to photographs which he had submitted to the Committee, he said that this depicted staff sitting outside the back of the premises, enjoying a glass of wine. The bin bags outside the premises in another photo had been seen outside on one occasion only. There had been no complaints from officers about any breaches of conditions associated with this. He maintained

that the situation was now contained, with no odour nuisance and 24/7 operation of a ventilation system at London Grace.

RESOLVED:

That, subject to the Standard Conditions for Special Treatment Premises and Standard Conditions for Premises Providing Nail Treatments, together with the additional condition on the existing licence dated 21 March 2018, the application from Ms Lauren Williams for the renewal of a Special Treatment Licence in Islington, for the purposes of manicures and pedicures only, in the premises known as London Grace, at 35 Camden Passage, N1 8EA, be approved for a period to 30 March 2019, with the following further condition:

i) That the extractor fan ventilation system be operated 24/7 and maintained as such

Reason for decision

The Committee considered all of the written and oral evidence.

The Committee noted that there had been no complaints, in particular since the installation of the x2 24/7 ventilation system, since 11 January 2019.

The Committee was satisfied that London Grace had taken reasonable steps to carry out remedial works to allay the odour issues and complaints and had taken on board recommendations and suggestions made by the Council's Environmental Health Team.

Note of the Committee

The Committee noted that the applicants were willing to introduce a system for acetone-based treatments to be used nearest to the main extractor fan.

12 RENEWAL OF SPECIAL TREATMENT LICENCE APPLICATION - LONDON GRACE, 35 CAMDEN PASSAGE, N1 8EA - EXEMPT APPENDIX (Item 2)

RESOLVED:

That the contents of the exempt appendix be noted.

The meeting ended at 6.30 pm

CHAIR

