

London Borough of Islington

Licensing Regulatory Committee - 20 September 2022

Non-confidential minutes of the meeting of the Licensing Regulatory Committee held in Committee Room 4, Town Hall, Upper Street, N1 2UD on 20 September 2022 at 6.30 pm.

Present: **Councillors:** Marian Spall (Chair), Phil Graham (Vice-Chair) and Asima Shaikh

Councillor Marian Spall in the Chair

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

Received from Councillor Martin Klute.

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

None.

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

None.

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

RESOLVED:

That the minutes of the meeting held on 11 January 2022 be confirmed as an accurate record of proceedings and the Chair be authorised to sign them.

9 **MEMBERSHIP, TERMS OF REFERENCE AND DATES OF MEETINGS OF THE LICENSING REGULATORY COMMITTEE IN 2022-23 (Item 6)**

RESOLVED:

That the membership of the Licensing Regulatory Committee, appointed by the Council on 26 May 2022, its terms of reference and dates of meetings for the municipal year 2022/23, as set out at Appendix A of the report of the Director of Law and Governance and Monitoring Officer, be noted.

10 **LONDON LOCAL AUTHORITIES ACT, 1991 PART II - RENEWAL OF THE SPECIAL TREATMENT LICENCE HELD IN RESPECT OF LONDON GRACE, 35 CAMDEN PASSAGE, LONDON N1 8EA (Item B1)**

The Licensing Officer reported that there were no updates to the written report provided to the Committee. Attempts had been made to contact the residents who had objected to the application, but the Council had had no response from them and they were not present this evening.

The Environmental Health Officer summarised events to June 2022, with the last odour diary sheets received in December 2020 and the last ASB out of hours call taking place in April 2021. Since the last Committee meeting, work had taken place between November 2018 and June 2019 on a legal case for prosecution of the business for breach of S80 Environmental Health Notice but this was stopped in June 2019 as legal advice had been received that it was not in the public interest to proceed with it. The running of extractor fans 24 hours a day had helped, with no instances of odour. Smoke tests on 30 January 2019 showed no smoke from the treatment area, carrying through only smoke from the gas meter cupboard, which was the responsibility of the freeholder. There had been a number of visits to the premises by Environmental Health and ASB officers between May and September 2019, resulting in no evidence of odour. There had been no diary sheets received, call outs or emails between December 2019 and July 2020 and the premises had been closed from March 2020 to July 2020 due to the Covid lockdown. In May 2021, Public Protection agreed to commission the services of an independent Occupational Hygienist to monitor both the business and residential premises to investigate Volatile Organic Compounds levels, allegations of formaldehyde fumes and issues with the structure causing delays/accumulations of odours and/or unusual routes of transmission. However, due to various factors, this had yet to take place.

In response to a question from a Member of the Committee, the Environmental Health Officer confirmed that there had been no contact with the objectors since April 2022. The Environmental Health Officer also confirmed that the objectors had bought their own hand-held monitors to test the air, but these were not permitted as evidence.

Members noted that some residents had said that the premises should not have been allowed to operate and the Environmental Health Officer said that planning consent had been granted for use as a nail bar. In response to a further question about actions to mitigate odour from the premises, the Environmental Health Officer stated that new fans had been installed in the premises, the ceiling in the basement had been reinstated and the applicants had temporarily sealed the gas meter cupboard in the basement. In a smoke test, smoke had showed up through the gas meter cupboard and any possibility of removing the cupboard was the responsibility of the freeholder. In addition, the applicant had considered carefully which nail treatments should be carried out in which part of the premises in order to mitigate any possible odour and carried out the treatments as close to ventilation systems as possible. The applicant had also identified a company utilising products with less than 50% acetone. The Environmental Health Officer said that there were less volatile compounds in this product. She noted that the premises and upstairs flat were part of an old building. The objectors, who lived above the premises, had carried out work to seal floorboards in their flat, which had also helped to prevent odour from the premises. There was no guarantee that, even if the gas cupboard was removed/had remedial works carried out, that the issue of odour from the downstairs premises would be rectified.

The Council was seeking to commission an Occupational Therapist to quantify the illegal levels of Volatile Organic Compounds emitted by the business into the

upstairs flat. Although attempts had been made to carry out this work in late 2021, the work had yet to take place.

In response to a question from a Member of the Committee, the applicant replied that the premises had been running since September 2017. A question was also asked about the alcohol licence and whether it was used for hen parties or events at the premises? She also sought clarification on the extent of mitigations in place to ease the situation and what work was still outstanding. The Environmental Health Officer replied that the investigation by the Occupational Therapist would clarify much of this. On the point about the alcohol licence, the Licensing Officer stated that she was not aware that parties were held at the premises, since there was a cap of 30 attendees. If attendees were having a nail treatment, the alcohol licence also allowed them to have wine. However, the conditions attached to the licence were extensive and she thought that they would exclude parties.

One of the applicants stated that their responses to the objections raised by the residents living above the premises were set out in their letter of 15 June 2022 to the Licensing Team. On the issues of parties, she said that once a week, or perhaps less frequently, a group of 7/8 people could make a booking, for example for a baby shower. This would not be a whole day event and the attendees would be sitting around a table, having a nail treatment, with a glass of wine if they chose to.

In response to a question, one of the applicants confirmed that London Grace advertised their services, highlighting that the offer was about nail treatments and products, with the offer of a cocktail. She described the premises as "non-toxic" as no strong chemicals were used. Instead, they used their own brands of products, which did not contain formaldehyde. In response to a question as to how it was likely that fumes from the premises could be smelt in the upstairs flat, the applicant said that all of the experts who had carried out tests at both premises had said that the odour from the products used was heavier than air and could not therefore rise up to the premises upstairs.

In response to a further question about mitigations taken, one of the applicants stated that they wanted good relations with their neighbours. They had worked with the Council by taking new mitigations such as reinstatement works to the ceiling in their premises, which also constituted the floor of the flat above. Ideally, the gas cupboard should be moved from the business downstairs to the flat upstairs. The premises had moved its own gas meter and cupboard but was not permitted to touch the gas meter belonging to the flat upstairs, even though it was based on their own premises. The Environmental Health Officer added that, during smoke tests, the smoke had risen up to the flat above and nowhere else. One of the applicants noted that, when smoke tests were carried out in January 2019, one test carried out in the basement gas meter cupboard resulted in smoke travelling to the residential entrance hall and another test, carried out in the basement treatment area, resulted in no smoke traveling between the two premises.

Licensing Regulatory Committee - 20 September 2022

In closing, the Environmental Health Officer said that a number of activities by Environmental Health and the ASB Team and other Council officers had taken place in the years from 2019 to 2022. It would not be possible to progress further without the report of the investigations of the Occupational Therapist.

One of the applicants stated that there had been complaints from the residents living above the premises for the past five years and, although the applicants did not agree with the complaints, they had nonetheless worked with the Council to carry out mitigating works, at considerable cost. London Grace operated ten stores, with eight of these under residential properties and they had not received complaints from the residents in those properties, nor from their neighbours on either side. Neither had there been complaints from their own staff in these premises as only non-toxic products were used in treatments.

The Committee adjourned at 7.00pm to deliberate their decision and reconvened at 7.20pm.

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 current licence at Appendix 2 of the agenda, viz:

1. The premises requires two hand washing facilities

and the additional condition

2. That the applicants use their best endeavours to pursue the onsite Occupational Hygiene monitoring proposed

the application from Ms Kirsten White 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 of 18 months.

Reason for decision

The Committee considered all of the written and oral evidence.

The Committee noted that the Licensing Officer had attempted to contact the objectors to this application, but they had not responded since April 2022.

The Committee were of the view that there was no clear evidence of the nuisance continuing to date, in the absence of any evidence to the contrary.

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.

11 **LONDON LOCAL AUTHORITIES ACT 1994 (AS AMENDED) SECTION 28 (1):
PROPOSAL TO REVOKE A STREET TRADING LICENCE - NON PERSONAL
TRADING (Item B2)**

The Chair of the Committee welcomed Mr Dakiye to the meeting.

The Street Trading Manager stated that Street Trading Conditions required traders to trade for a minimum of three days per week. Mr Dakiye had been trading since March 2013, first selling mobile telephone accessories and later, because trade was not so good, adding wallets, belts and watches to his licence.

In March 2019, following requests by Mr Dakiye, his application to vary his licence to sell Ethiopian hot foods was approved by the Street Trading Panel. At the time, there was no one else selling Ethiopian food in Whitecross Street Market and the Council felt that it was right to support a local resident trying to succeed in a local business. The business was going well until in October 2020, when Mr Dakiye had to request carer's leave from trading to care for a family member with health needs.

Towards the end of March 2020, the Covid pandemic set in and all Council licensed traders faced disruption and the occasional suspension of licences. Although the sale of hot foods was permitted, traders were unable to make a living due to lack of footfall and were awarded dispensation. Mr Dakiye returned to trade for a brief period in December 2021, but his family member was still very ill and he had to provide care.

The return of traders post pandemic was staggered, but most traders had returned by the end of summer of 2021. Mr Dakiye was contacted in August 2021 as he had not yet returned to trade. However, once again due to the poor health of his family member, he was not able to return to trade in Whitecross Street Market. The Street Trading Team supported and communicated with Mr Dakiye on a regular basis through all the time he was absent from the Market.

Mr Dakiye's licence was renewed in January 2022 but Mr Dakiye did not return to trade, even though he had said that he would and was happy to renew and pay the rent, although he continued to defer his return.

There had been a waiting list for traders wishing to sell hot food in markets and the Street Trading Team had been approached by another local resident wanting to trade in Whitecross Street Market to sell Ethiopian foods.

Since the report for this meeting had been published, Mr Dakiye had returned to trade in Whitecross Street Market in the past week. The Street Trading Manager stated that, whilst the Council was reluctant to revoke any trader's licence, they had to balance this against the wish of others to trade in the Market to earn a living.

The Street Trading Manager said that, now that Mr Dakiye had returned to trade, her proposal was that the situation be monitored and she would report back to the Committee in December 2022 on the situation of Mr Dakiye's trading record.

Mr Dakiye stated that he very much enjoyed working in the Market. The health of his family member was now more manageable and his family situation had improved which meant that he felt confident to return to work in the Market.

RESOLVED:

- a) That the application by the Council's Street Trading Manager for the revocation of the street trading licence of Mr Demiso Dakiye (Licence no LN/000017294), licensed trader at pitch number 547 in Whitecross Street Market, be postponed to the next meeting of the Committee on 5 December 2022.
- (b) That it be noted that Mr Dakiye had resumed trading in the previous week and that his continued attendance be monitored by the Street Trading Manager to ensure that he was complying with the conditions of his licence.
- (c) That the Street Trading Manager report back to the Committee on 5 December 2022 on (b) above.

Reasons for the decision

The Committee considered all of the written and oral evidence, including the copies of the front pages of letters from Barts Health NHS Trust and Whittington Health NHS, concerning his family member's health conditions and representations from Mr Dakiye.

The Committee noted that Mr Dakiye had resumed trading in Whitecross Street in the previous week.

The Committee heard directly from Mr Dakiye about his reasons for not being able to trade in Whitecross Market since January 2022, at which point his licence had been renewed. The Committee also noted that Mr Dakiye had continued to pay his fees throughout this time and remained in communication with the Street Trading Team.

12 **LONDON LOCAL AUTHORITIES ACT 1994 (AS AMENDED) SECTION 28 (1):
PROPOSAL TO REVOKE A STREET TRADING LICENCE - NON PERSONAL
TRADING - EXEMPT APPENDIX (Item F1)**

Noted.

The meeting ended at 7.45 pm

CHAIR