

Decisions of the Licensing Sub-Committee

25 May 2017

Members Present:-

Councillor Wendy Prentice (Chairman)
Councillor Alison Cornelius
Councillor Claire Farrier

Officers:

Bob Huffam – HB Public Law Legal Officer
Maria Lugangira – Governance Officer
Sharon Hofer – Environmental Health
Chris Carabine - Environmental Health

Also in attendance
PS Jane Tuffin

Applicant:
Ms Linh My Pham
Mr Ngoc Quyen Vuong

1. APPOINTMENT OF CHAIRMAN

Councillor Claire Farrier, seconded by Councillor Alison Cornelius nominated Councillor Wendy Prentice to preside as Chairman for the meeting.

2. ABSENCE OF MEMBERS (IF ANY)

None.

3. DECLARATION OF MEMBERS' DISCLOSABLE PECUNIARY INTERESTS AND NON PECUNIARY INTERESTS (IF ANY)

None.

4. LICENSING SUB-COMMITTEE HEARING PROCEDURE

The Chairman explained the procedure that would be followed for the meeting.

5. SPECIAL TREATMENT LICENCE RENEWAL- LINH NAIL SALON, 18A VIVIAN AVENUE, HENDON, LONDON NW4 3XP

The Sub-Committee considered an application for the renewal of a Special Treatment Licence under the London Local Authorities Act 1991 – Part II following an objection from the police in relation to Linh Nail Salon, 18A Vivian Avenue, Hendon, London, NW4 3XP

6. MOTION TO EXCLUDE THE PRESS AND PUBLIC

RESOLVED that the parties be excluded from the meeting, together with the press and public, in accordance with regulation 14(2) of the Licensing Act 2003 (Hearings and Regulations) 2005.

7. DELIBERATION BY THE SUB-COMMITTEE IN PRIVATE SESSION

The Sub-Committee deliberated in private session, accompanied by officers from HB Public Law and the London Borough of Barnet Governance Service.

8. RE-ADMISSION OF THE PRESS AND PUBLIC: ANNOUNCEMENT OF THE DECISION OF THE SUB-COMMITTEE

The parties to the application were readmitted to the meeting and the chairman conveyed the Sub-Committee's decision as follows:

"This is an application for the renewal of the Special Treatment License in respect of Linh Nails Salon, 18A Vivian Avenue, Hendon, London NW4 3XP. The business offers nail treatments, i.e. manicure, pedicure and nail extensions.

There is an objection to the application by the Police which states that on the 10th November 2016 both applicants were arrested at their home address for being knowingly concerned in fraudulent evasion of VAT and for possessing controlled drugs with intent to supply. The Police accept, as does the Health and Safety Officer, that there have been no other causes for concern in respect of the premises.

The Sub-Committee must consider the grounds specified in the London Local Authorities Act 1991- Part II Section 8. In this instance the Police rely on Section 8 (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 licence".

Neither the Council's statement or the London Local Authorities Act 1991 provides a definition of a fit and proper person. The Sub-Committee has noted the guidance issued by HM Customs and Excise which sets out various criteria which in essence refer to a person having been involved in tax fraud. This relates more to issues around charities. Other regimes also refer to such a test but more specifically include issues such as offences under the Sexual Offences Act 2003. There are no such suggestions here.

It does seem to the Sub-Committee that issues relating to tax avoidance or drugs must be relevant to the question of whether an applicant is a fit and proper person. That is not to say that the mere reference to it is sufficient to require an application to be refused. There must be some evidence to substantiate the objection on this basis.

The applicants argue that that they have not been convicted of or even charged with any offences. They also say that taking away their licence would be a breach of their human rights. The latter argument is not accepted. The application has been heard under the proper legal and administrative process in accordance with the London Local Authorities Act and the policy for London Borough of Barnet and such due process does permit the refusal of this application.

It is not for the Panel to consider the guilt or innocence of the applicants. It is for us to consider whether they may reasonably be regarded as fit and proper persons. We were

very concerned to hear that ecstasy in particular but also other controlled drugs were found on their home premises, especially where two young children are being brought up.

Despite our considerable concerns however it is clear that the tests on the items seized at the premises have yet to be finalised and it cannot be said what the items were, although the applicants have readily admitted that they include ecstasy and ketamine albeit for personal use. We do not know about the amount found on the premises. While it does seem to us to be very suspicious there is not enough evidence for us to find that the applicants are not fit and proper persons. It may be that the Police will consider returning these premises to the Committee once there is more evidence. We note that the VAT enquiries have been dropped.

In the circumstances we grant the application for a renewal of the licence but must reiterate our concern about the drugs, as admitted by the applicants, found on the premises. “

Right of Appeal

Any party aggrieved with the decision of the licensing Sub-Committee on one or more of the grounds set out in schedule 5 of the Licensing Act 2003 may appeal to the magistrates' court within 21 days of notification of this decision.

9. ANY OTHER ITEM(S) THE CHAIRMAN DECIDES ARE URGENT

None.

The meeting finished at 12.00 pm