

Premises Licensing Team

Public Protection and Licensing

Special Treatment Guidance and Procedure

Special Treatment Applications

1 Introduction

1.1 Special treatment premises are governed by Part II of the London Local Authorities Act 1991. The interpretation of an 'establishment for special treatment' as defined by the Act is any premises 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 the like kind or vapour, sauna or other baths.

1.2 It does not include

- (a) any premises which are not used for gain or reward;
 - (b) any premises where the special treatment is carried out by or under the supervision of—
 - (i) a medical practitioner duly registered by the General Medical Council; or
 - (ii) any bona fide member of a body of health practitioners which has given notice in writing to the borough council that it—
 - (A) has a register of members;
 - (B) requires as qualification for membership qualifications by way of training for, and experience of, the therapy concerned;
 - (C) requires its members to hold professional indemnity insurance;
 - (D) subjects its members to a code of conduct and ethics, including a prohibition of immoral conduct in the course of their practice; and
 - (E) provides procedures for disciplinary proceedings in respect of its members;
- and has supported that notice with satisfactory documentary evidence, if required by the council; or

(iii) in the case of acupuncture, a dentist registered under the [1984 c. 24.] Dentists Act 1984;

(c) any premises which are used by a person who is registered by a board under the [1960 c. 66.] Professions Supplementary to Medicine Act 1960—

(i) solely for the practice of the profession in respect of which he is so registered; or

(ii) for the practice of the profession in respect of which he is so registered and for the conduct by him of any business ancillary to such practice and no other purpose;

(d) any hospital provided by the Secretary of State or by a National Health Service Trust established under the [1990 c. 19.] National Health Service and Community Care Act 1990 or by a charity which is registered under section 4 of the [1960 c. 58.] Charities Act 1960 or is exempted from registration by subsection (4) of that section; or

(e) any nursing home which is for the time being registered under Part II of the [1984 c. 23.] Registered Homes Act 1984 or exempted from registration under that Part of that Act;

Period of Licence

1.3 A special treatment licence is valid for a period of 12 months from the date of the grant. It is the applicant's responsibility to renew the licence before its expiry each year.

2 Application Requirements

2.1 Below are the types of application and the documentation needed to be submitted with the application:

New Application

- Application Form (this form has to be the prescribed Westminster form and cannot be accepted if it has been adapted)
- Application fee (see fee's list relating to special treatment premises)

- A scaled plan of the premises – A guide size for the plan is A4 size/(scale 1:100), they should include the following:
 - o Ambit of licensed premises
 - o Defined treatment areas/rooms
 - o Exits/Final Exits and escape routes
 - o WC's/Showers/wash hand basins
 - o Passageways
 - o General location of equipment
 - o Safety Equipment including: Emergency Lighting, Automatic Fire Detection, Fire Fighting Equipment, Fire Exit Signage

Note: It is a requirement under the London Local Authorities Act 1991 that copies of the application form are sent to the Metropolitan Police Service and the London Fire Brigade for ALL TYPES of application.

Transfer Application

- Application Form (this form has to be the prescribed Westminster form and cannot be accepted if it has been adapted)
- Application fee (see fee's list relating to special treatment premises)
- Consent form from outgoing licensee.

3 Application Procedure

3.1 An application for a licence should be made on the statutory form. This can be completed on-line. The form of application shall be signed by the applicant, or a solicitor or other duly authorised agent acting on behalf of the applicant.

3.2 Anyone over the age of 18 can apply for a special treatment licence. Businesses may also apply but must supply the names and private residential addresses of all those involved in the company and those who are responsible for the general day to day running of the premises.

3.3 The application must be accompanied by a plan of the area to be used for special treatments.

3.4 The applicant must pay a fee to accompany the application. The application fee is non-refundable.

3.5 If one or more of the application criteria are not met, the application will be deemed invalid and the applicant notified. The licensing authority will then allow the applicant to submit/resubmit any required documents. If these documents are provided the application will be deemed valid from the day they are received. If they are not received, the application will become completely invalid. Should the applicant wish to gain approval at any point in the future, he will have to submit a completely new application along with the relevant fee. Any person who's application has been completely invalidated can apply for a refund of the part of the application fee that represents enforcement costs. The relevant forms can be obtained from Westminster's Licensing Service.

3.6 Once a valid application is received a 28 day formal consultation period, from the day after receiving the application, begins during which the Council's consultees may make representations in relation to the application.

3.7 The consultees for this type of application are the professional bodies whose opinion the licensing authority considers in determining the application. These are:

- a. Environmental Health
- b. London Fire Authority
- c. The District Surveyors Service
- d. Metropolitan Police Service
- e. Planning Authority

3.8 As part of the application process, one or more of the consultees will inspect the premises as soon as is practicable after the receipt of the application. They will contact the applicant directly to arrange this. Once they have considered the application and/or made an inspection they may object on any grounds they think may prevent the premises from being safe to the public and an appropriate for providing special treatments.

3.9 Each Responsible Authority has their own set of requirements which they consider when deciding if a premises is fit for purpose or not. An indication of what these are is listed below. The list is not exhaustive, the relevant legislation allows consultees to object on any grounds they think relevant:

a. Environmental Health

Visits are made with regard to all applications for approvals to ensure that the applicant is compliant with their duties under the Health and Safety at Work etc Act 1974 and Food Safety Act 1990. This will ensure that the premises are safe to have members of the public on them, that maximum capacities are stated on the approval to minimise overcrowding, have sufficient heating, storage and food preparation facilities for caterers, if relevant, and adequate sanitary facilities. Where applicants are offering special treatments the Environmental Health Officer will ensure that the treatment is safe, is only carried out by qualified therapists and that pre and post treatment consent and after care information is given to the client. Where premises offer high risk treatments such as tattooing and body piercing checks are also carried out that the premises have arrangements in place with the Environment Agency for the disposal and incineration of contaminated clinical waste.

b. London Fire Authority

Compliance with Fire Regulations.

c. District Surveyor

The District Surveyors will assess each approval application from a public safety reference and look to ensure that the appropriate technical standards are in place for the activities being applied for. This may entail advising on issues such as, means of escape, primary and secondary lighting, seating layout and design and safe capacities. If works are required to bring the premises up to the relevant standard the District Surveyors will then ensure that these are completed satisfactorily prior to any approval being granted.

3.10 If one or more of the consultees object to the application, they must notify the licensing authority in writing and explain the reason for it. Objections made outside the statutory 28 day consultation period will not be considered. Any relevant objections will then be forwarded on to the applicant who will then have the chance to respond and provide any further documentation that may support their application. Unless the objection relates to the character of the applicant, council officers may seek to mediate between the parties to see if agreement can be reached without the need for a licensing hearing.

No Objections

3.11 If there are no relevant objections from interested parties or consultees by the end of the 28 day consultation period, the application will be considered under delegated authority. The licensing authority will then send out a licence as soon as possible. Attached to the licence will be the standard conditions (Appendix 3) that must be adhered to if the premises is to maintain its licence. As soon as the licence is received the premises may carry out special treatments that the registered therapists are licensed for.

Objections Withdrawn

3.12 If an objection relates to the suitability of a premises, it may be withdrawn if the objector and the applicant can agree on certain conditions that will apply whilst the licence is in operation. Such a condition may relate, for example, to a capacity figure put on a room in the premises that must not be exceeded during use of the licence. Once the objection/s are withdrawn and the consultation period comes to an end, the application can be considered under delegated authority. The licence will be sent to the applicant with the standard conditions attached as well as those condition/s agreed during the conciliation process. All the conditions must be adhered to if the licence is to be maintained.

4. Hearings

Objections Maintained

4.1 If objections are made and agreement cannot be reached to conditions that satisfy both parties, the case will be referred to the Licensing SubCommittee to be determined. The licensing Sub-Committee is a panel of at least 2, but usually 3 Councillors that meet regularly to determine the outcome of licensing applications. Written notice of the hearing will be given to the applicant and all other parties concerned.

4.2 The hearing is an informal gathering of the parties involved in the determining of licence applications. This includes the applicant themselves, any local residents or their representatives that have made objections, consultees, and officer/s from the licensing authority. Each party has the opportunity to make their case verbally to the Sub-Committee before it makes its decision on the application. Applicants, if they wish, may be to be represented by a solicitor or a barrister during the hearing. Although the strict rules of evidence seen in a court of law do not apply, the panel will nonetheless be guided by legal principles in determining whether evidence is both relevant and fairly admitted.

4.3 A report will be published prior to the hearing by Westminster Council's Licensing Service. This report will contain any objections by consultees, any response to the objections by the applicant, any relevant supporting evidence from either side, and background information relating to the case. It

will be used by the Sub-Committee, in addition to evidence given at the hearing, in determining the application. Any documentation for inclusion should be sent to the licensing service as soon as possible prior to the hearing.

5. Decisions

Approval Granted

5.1 If the Committee is minded to grant the approval, it will notify the applicant and all other interested parties and responsible authorities as soon as is reasonable possible. The licence will then be created by the licensing authority and sent out to the applicant, having immediate effect from the date of issue on the licence.

5.2 The applicant will also receive a copy of the standard conditions relating to special treatment premises. The conditions are automatically attached to all issued licences (appendix 3). In addition, the licensing authority may attach to the licence, any further conditions as it considers reasonable in order to ensure that the facilities provided at the premises are suitable, and that treatments carried out at the premises do not give rise to health and safety issues.

5.3 The licence lasts for 12 months from the date of issue or for a temporary period as appropriate. At the end of the expiry period, the licence is subject to renewal. It is the applicant's responsibility to renew the licence before its expiry each year.

Approval Refused or Granted with Conditions

5.4 If the authority feels that the premises do not fulfil the requirements mentioned above, or that it is satisfied that it doesn't fulfil any other reasonable requirements which the authority considers appropriate, it may refuse approval or grant it subject to certain conditions to be attached to the licence. The authority will give notice of its decision to the applicant and all other interested parties as soon as is reasonably possible. If the applicant is unhappy with the decision, they have the right to appeal.

Provisional Grant

5.5 Where application is made to the council for the grant of a licence in respect of premises which are to be, or are in the course of being, constructed, extended or altered and the council are satisfied that the premises would, if completed in accordance with the requirements of the borough council, be such that they would grant the licence, the council may grant the licence subject to a condition that it shall be of no effect until confirmed by them.

5.6 The borough council shall, on application being made for the appropriate variation of the licence, confirm any licence granted by virtue of subsection (1) above if and when they are satisfied that the premises have been completed in accordance with the requirements of the borough council.

6. Right of Appeal

6.1 Applicants have the right to appeal a Sub-Committee decision at the Magistrates' Court.

7. Change of Licence Holder (Transfer)

7.1 The named person/s (company) on the licence can be amended. A transfer application must be made and the appropriate fee paid. Consent from the outgoing licensee must be submitted with the application stating that they are confirming that a new licensee is taking over and that they will no longer be the licensee. If consent cannot be obtained from the outgoing licensee then proof that reasonable attempts have been made to get their consent must be submitted with the application. Transfer applications follow the same process to the procedure above however objections raised by the consultees can only be raised on the basis of whether they consider the applicant to be a fit and proper person to hold the licence.

8. Variation

8.1 Once a licence has been issued it can be varied a number of ways. Again variation applications follow the same process above.

9. Change of Premises Name

9.1 If the name of the premises changes after the grant of a licence then the applicant must write to the Council stating the new name. The appropriate fee must also be supplied at the time of application. As this type of application is just a change of details to the premises name there is no consultation process. The Council's records will be amended and an amended licence issued.

10. Change of Details

10.1 If for any reason the postal address of the licensee changes, the Licensing Authority must be notified. An email giving details of the change should be sent to: licensing@westminster.gov.uk

11. Important Contact Information:

Licensing Service –

Westminster City Council, 15th Floor City Hall, London, SW1E 6QP.

Email: licensing@westminster.gov.uk

Phone: 020 7641 6500