

Committee :	Date	Classification
Licensing Sub-committee	30th May 2017	Unclassified

Report of: David Tolley Head of Environmental Health and Trading Standards Originating Officer: Corinne Holland Licensing Officer	Title: Licensing Act 2003 Application for a variation of a premises licence for (THE BOTHY), Unit C West India Quay, 16 Hertsmere Road, London, E14 4AX Ward affected: Canary Wharf
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1.0 Summary

Applicant: **Drake and Morgan Ltd**

Name and **THE BOTHY**

Address of Premises: **Unit C, West India Quay
16 Hertsmere Road
London
E14 4AX**

Licence sought: **Licensing Act 2003 – variation of a premises licence**

- **Extending the times of the licensable activities**

Representations: **Resident**

2.0 Recommendations

2.1 That the Licensing Committee considers the application and objections then adjudicate accordingly.

LOCAL GOVERNMENT 2000 (Section 97)
LIST OF "BACKGROUND PAPERS" USED IN THE DRAFTING OF THIS REPORT

Brief description of "background paper"

Tick if copy supplied for register

If not supplied, name and telephone number of holder

File Only

Corinne Holland
020 7364 3986

3.0 **Background**

3.1 This is an application for a variation of a premises licence for (The Bothy), Unit C, West India Quay, 16 Hertsmere Road, London E14 4AX.

3.2 A copy of the existing licence is enclosed as **Appendix 1**.

3.3 Please note the Premises Licence was varied on 17/3/17 but is waiting to be issued. The variation incorporated:

1. A change to the internal layout of the premises.
2. To permit under 18's to be on the premises after 10pm if accompanied by an adult
3. To amend the requirements in relation to the provision of SIA door staff.
4. Change the name to The Bothy.

3.4 The timings of the existing licence are detailed below for information only:-

Provision for the sale of Alcohol (on and off)

- On Monday to Wednesday, 10:00 hrs to 01 00 hrs the following day
- On Thursday to Saturday, 10:00 hrs to 03:00 hrs the following day
- Sunday, 12:00 hrs to 01:00 hrs the following morning

Late Night Refreshment

- On Thursday to Saturday, 23:00 hrs to 00:00 hrs

Regulated Entertainment

Live entertainment of all descriptions as currently permitted under the public entertainment licence. The playing of all description of amplified recorded music as permitted under the existing licence (s).

- On Monday to Wednesday, 10:00 hrs to 23:00 hrs
- On Thursday to Saturday, 10:00 hrs to 00:00 hrs

On St. David's Day, St Patrick's Day, St George's, Day and St. Andrew's Day, the finish time will be extended by one hours, with seven days notice and agreement with the Police.

For statutory bank holiday weekend periods (Friday, Saturday, Sunday and Monday) and for the Thursday before Good Friday and for Christmas Eve, the finish time will be extended by one hour beyond theses times. On occasions of local, national or international significance or for charitable events, limited to twelve per year, the finish time will be extended by one hour, with ten days notice and agreement with the Police.

"In the event of a recognised event (the event not exceeding 15 annually) which falls outside the current permitted hours on the Premises Licence to permit licensable activities commencing on hours before the start of the event and ending one hour after the end of the event, the details of the event to be notified to the Licensing Authority and the Police at least 10 days beforehand, with the Police giving a prior written consent in each case."

The opening hours of the premises

- On Monday to Wednesday, 10:00 hrs to 01:00 hrs the following day
- On Thursday to Saturday, 10:00 hrs to 03:00 hrs the following day
- Sunday, 12:00 hrs to 01:00 hrs the following day

3.5 A copy of the variation application is enclosed as **Appendix 2**.

3.6 The applicant has described the nature of the variation as follows:

“Amend hours to permit earlier opening and supply of alcohol as part of a breakfast offer.”

3.7 The times that have been applied for as follows:

The Supply of Alcohol (on and off sales)

- Monday to Wednesday from 08:00hrs to 01:00hrs
- Thursday to Saturday from 08:00hrs to 03:00hrs the following day
- Sunday from 10:00hrs to 01:00hrs the following day

The opening hours of the premises

- Monday to Wednesday from 08:00hrs to 01:00hrs
- Thursday to Saturday from 08:00hrs to 03:00hrs the following day
- Sunday from 10:00hrs to 01:00hrs the following day

4.0 Location and Nature of the premises

4.1 Photographs of the venue and immediate vicinity will be provided at the hearing.

4.2 The site plan of the venue is included as **Appendix 3**.

4.3 Maps showing the vicinity are included as **Appendix 4**.

4.4 Details of the nearest licensed venues are included as **Appendix 5**.

5.0 Licensing Policy and Government Advice

5.1 The Council has adopted a licensing policy and this is available from the Licensing Section, and at the hearing. The revised policy came into effect on the 1st November 2013.

5.2 Relevant Sections of the policy are brought to the attention of Members within the Licensing Officers report.

5.3 The Home Secretary has issued Guidance under Section 182 of the Licensing Act 2003. This is available on the Government’s website, www.homeoffice.gov.uk. It was last revised in March 2015.

5.4 Relevant Sections of this advice are brought to Members attention within the Licensing Officers report. Members should note however, than in some areas Tower Hamlets, after a proper consideration of local circumstances, has not followed the Government's advice, or has developed it further.

6.0 Representations

6.1 This hearing is required by the Licensing Act 2003, because relevant representations have been made by the following:

- Resident (**Appendix 6**)

6.2 All of the responsible authorities have been consulted about this application. They are as follows:

- The Licensing Authority
- The Metropolitan Police
- The LFEPA (the London Fire and Emergency Planning Authority).
- Planning
- Health and Safety
- Noise
- Trading Standards
- Child Protection
- Public Health

6.3 In addition the application was required to be advertised in a local newspaper and by a blue poster. Only objections that relate to the following licensing objectives are relevant:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm

6.4 Essentially, the relevant parties oppose the application because the applicant has not explained how within the context of the application they will meet the licensing objectives, particularly the prevention of crime and disorder and the prevention of public nuisance.

6.5 There are strict time limits to any representations. The time limits are contained in The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005.

6.6 The applicant has offered measures in the operating schedule of the application that address the promotion of the Licensing Objectives. If there were no representations, the Licensing Authority would grant the licence, with conditions consistent with the operating schedule, which are relevant, proportionate and enforceable. Members are asked to consider the schedule and incorporate any conditions as necessary to address the licensing objectives.

7.0 Conditions consistent with Operating Schedule (The applicant has repeated the existing conditions of the licence)

7.1 No off sales before 10:00hrs on any day;

7.2 Any supply of alcohol between 08:00hrs and 10:00hrs shall only be made as an ancillary to a breakfast or brunch meal;

8.0 Conditions in consultation with the responsible authorities/other persons

8.1 None

9.0 Licensing Officer Comments

9.1 The following is intended simply to advise Members of the relevant aspects of the Boroughs Licensing Policy, guidance from the Secretary of State, legislation and good practice (See 6.2). Members may depart from the Council's Licensing Policy and/or Government advice, provide they consider it appropriate to do so, and have clear reasons for their decision.

9.2 Guidance issued under section 182 of the Licensing Act 2003

- ❖ As stated in the guidance it is "provided to licensing authorities in relation to the carrying out of their functions." It is a key mechanism for promoting best practice, ensuring consistent application and promoting fairness (1.7)
- ❖ Also "so long as licensing authorities have properly understood the Guidance, they may depart from it if they have reason to do so as long as they have reason to do so." When doing so licensing authorities will need to give full reasons for their actions (1.9).
- ❖ Also Members should note "A Licensing Authority may depart from its own policy if the individual circumstances of any case merit such a decision in the interests of the promotion of the licensing objectives." (1.12)
- ❖ Conditions may not be imposed for the purpose other than the licensing objectives.
- ❖ Necessary conditions should emerge from a risk assessment by the applicant, which should then be reflected in the operating schedule (10.6).
- ❖ The Licensing Authority may only impose such conditions as are necessary for meeting the licensing objectives.
- ❖ It is Government policy that facilities for people and performers with disabilities should be provided at places of entertainment.
- ❖ "The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions

regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities.” (10.11)

- ❖ Mandatory conditions must be imposed (10.38) and censorship avoided (10.17).
- ❖ Licensing authorities should not attach standardised blanket conditions promoting fixed prices for alcoholic drinks to premises licences or club licences or club premises certificates in an area. This may be unlawful under current law. However, it is important to note that the mandatory conditions made under sections 19A and 73B of the 2003 Act prohibit a number of types of drinks promotions where they give rise to a significant risk to any one of the four licensing objectives (10.26).

- 9.3 The Licensing Act 2003 permits children of any age to be on the premises which primarily sells alcohol providing they are accompanied by an adult. It is not necessary to make this a condition.
- 9.4 In all cases the Members should make their decision on the civil burden of proof that is “the balance of probability.”
- 9.5 In all cases Members should consider whether or not primary legislation is the appropriate method of regulation and should only consider licence conditions when the circumstances in their view are not already adequately covered elsewhere.
- 9.6 The Government has advised that “Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.” (2.20)
- 9.7 The Council’s Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.
- 9.8 In **Appendices 7 - 9** Members are given general advice, and also have explanations of the Council’s Licensing Policy, Government advice and other legislation relating to the matters in the representations.

10.0 Legal Comments

- 10.1 The Council’s legal officer will give advice at the hearing.

11.0 Finance Comments

11.1 There are no financial implications in this report.

12.0 Appendices

Appendix 1	A copy of the existing licence
Appendix 2	A copy of the variation application
Appendix 3	Site plan of the venue
Appendix 4	Maps showing vicinity of venue
Appendix 5	Details of nearest licensed venues
Appendix 6	Representation from Resident
Appendix 7	Home Office guidance on public nuisance
Appendix 8	Licensing Policy advice on public nuisance
Appendix 9	Licensing Officer comments on noise whilst the premises is in use