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| Committee : | Date | Classification |
| Licensing Sub-Committee | 31 January 2017 | Unrestricted |

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| Report of: David Tolley, Head of Environmental Health & Trading Standards Originating Officer: Mohshin Ali, Senior Licensing Officer | Title: Licensing Act 2003 Application for a Premises Licence for Baltimore Tower, Ground, 43rd , 44th and 45th Floors, 25 Crossharbour Plaza, London E14 9TA Ward affected: Blackwall and Cubitt Town |
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1.0 Summary

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| Applicant: | Rhubarb Food Design Ltd |
| Name and | Baltimore Tower |
| Address of Premises: | 25 Crossharbour Plaza London E14 9TA |
| Licence sought: | Licensing Act 2003 – premises licence <ul style="list-style-type: none"> • The sale by retail of alcohol • The provision of regulated entertainment • The provision of late night refreshment |
| Representations: | Local Residents |

2.0 Recommendations

- 2.1 That the Licensing Sub Committee considers the application and representations 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

Mohshin Ali
020 7364 5498

3.0 Background

- 3.1 This is an application for a premises licence for Baltimore Tower, Ground, 43rd, 44th and 45th Floors, 25 Crossharbour Plaza, London E14 9TA. The other floor plans have been included for information only.
- 3.2 The applicant has described the premises as follows: "Baltimore is a restaurant and bar concept that is still under construction. We anticipate an opening in the Spring of 2017. It is set to become London's highest bar and restaurant in the roof of the Baltimore Tower, on levels 43 & 44 with a mezzanine 45th floor. There will also be a restaurant lobby and reception with bar at ground floor level".
- 3.3 The applicant has indicated that there will be no licensable activities on the ground floor. However, the applicant may wish to clarify this.
- 3.4 A copy of the premises licence application form is enclosed as **Appendix 1**.
- 3.5 The applicant has revised the timings for the licensable activities in consultation with Environmental Health (Noise) and Met Police as follows:-

The Sale by retail of alcohol (On sales only)

- Monday to Wednesday, from 08:00 hours to midnight
- Thursday to Saturday, from 08:00 hours to 00:30 hours the following day
- Sunday, from 08:00 hours to 22:30 hours

The provision of late night refreshment – Indoors

- Monday to Wednesday, from 23:00 hours to midnight
- Thursday to Saturday, from 23:00 hours to 00:30 hours the following day
- Sunday, from 23:00 hours to 22:30 hours

The provision of regulated entertainment – Indoors (Live Music and recorded music only)

- Monday to Wednesday, from 08:00 hours to midnight
- Thursday to Saturday, from 08:00 hours to 00:30 hours the following day
- Sunday, from 08:00 hours to 22:30 hours

Further details: "The venue will primarily play recorded music during the day for diners in the restaurant and bar. However, we are exploring the possibility of having live bands on the premises, which on occasion might be amplified".

The opening hours of the premises

- Monday to Wednesday, from 08:00 hours to 00:30 hours the following day
- Thursday to Saturday, from 08:00 hours to 01:00 hours the following day
- Sunday, from 08:00 hours to 23:00 hours

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 2**.

4.3 Maps showing the vicinity are included as **Appendix 3**.

4.4 Details of the nearest licensed venues are included as **Appendix 4**.

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, that 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 All representations have to meet basic legal and administrative requirements. If they fail to do so they cannot be accepted. When rejected the person sending in the representation must be written to, and an explanation for rejection given in writing

6.2 A responsible authority or other person can make a representation. There are two tests for other persons and only one for a responsible authority. The two tests are contained in Section 18 of the Act.

- 6.3 All representations must be “about the likely effect of the grant of the premises licence on the promotion of the licensing objectives.” Likely means something that will probably happen, i.e. on balance more likely than not.
- 6.4 Representations by responsible authorities do not have to meet the second test of not being vexatious and frivolous. Other persons have to meet this test.
- 6.5 The Home Office recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation.
- 6.6 Section 182 Advice by the Home Office concerning relevant, vexatious and frivolous representations is attached as **Appendix 5**.
- 6.7 All the representations in this report have been considered by the relevant officer (Team Leader Licensing & Safety) and determined to have met the requirements of the Licensing Act 2003.
- 6.8 This hearing is required by the Licensing Act 2003, because relevant representations have been made the following local residents:
- Aaron & Cleo Bartram - **Appendix 6**
- 6.9 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
 - Environmental Health (Noise)
 - Trading Standards
 - Child Protection
 - Public Health
- 6.10 In addition the application was required to be advertised in a local newspaper and by a blue poster. The consultation period was extended as the applicant initially failed to exhibit the public notice at the premises. The application has now been correctly advertised as required by the Regulations.
- 6.11 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

- 6.12 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 objective of the prevention of public nuisance.
- 6.13 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.
- 6.14 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

- 7.1 There are currently a number of 'proof of age' schemes that are operating nationally in the UK, the majority of which carry "The Proof of Age Standards Scheme" (PASS) logo. In addition to these a photo driving licence or passport will also be acceptable proof of age.
- 7.2 Implementing a programme of regular staff training in all aspects of the restaurants, with particular attention to the safety of children.
- 7.3 All alcohol will be supervised at all times when the premise is open, to ensure children are not able to access any stock. All bar staff will be over the age of 18.

8.0 Conditions in consultation with the Responsible Authorities/other persons

- 8.1 Environmental Health (Noise) has agreed (please see **Appendix 7**) the following with the applicant:
"I have no objections to the License Application for Baltimore Tower, following agreement to the amendments and conditions to be added (see email trail below), and as follows:-
- Mon, Tues, Weds – until midnight, with 30 minutes finish up time prior to closing at 00:30 hours
 - Thurs, Friday, Saturday – until 00:30, with 30 minutes finish up time prior to closing at 01:00 hours
 - Sunday – until 22:30s, with 30 minutes finish up time prior to closing at 23:00

To include the conditions as below:-

- 1) No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
- 2) Loudspeakers shall not be located in the entrance lobby or outside the premises building”.

8.2 Met Police has also agreed (please see **Appendix 8**) the following with the applicant:

1) A CCTV system to be put in place, the cameras are to be of sufficient quality so that people’s faces are clearly identifiable from the footage. The cameras are to be placed in such a way as they cover areas of the pub specified by the Police. The system is to record the footage and to keep it for a minimum of 30 days and a copy off CCTV footage is to be made available to Police or the Local Authority upon request and supplied within 24 hours. While the premises are open to the public a member of staff must be on duty who can operate the CCTV system.

2) The premises will operate a Challenge 21 policy, all those who look under 21 years of age will asked for proof of age.

3) An incident record book is to be kept at the premises, this book will record all refusals of the sale of alcohol, all disorder and crimes that occur either in the premises or involve the premises customers, or any other incident of note. The incident book is to be signed off every day by the manager even if there is nothing to report.

4) Police will be given 2 weeks’ notice of any private functions booked for the venue, this information will include:

- Numbers of people attending
- If it is a promoted event
- If Dj's are being used
- A risk assessment carried out by the management to cover event security”.

8.3 The revised times and conditions have been emailed to Aaron & Cleo Bartram and they still maintain their objections. The email exchanges are included in **Appendix 6**.

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. 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 under the 2003 Act.” It is a key medium for promoting best practice, ensuring consistent application and promoting fairness equal treatment and proportionality (1.7).
- ❖ Also “as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons. Departure from this Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.” Therefore 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)
- ❖ Also, “The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives.” Therefore, conditions may not be imposed for the purpose other than promoting the licensing objectives and in some cases no additional conditions will be appropriate. (10.8)
- ❖ Necessary conditions should emerge from a risk assessment by the applicant, which should then be reflected in the operating schedule (10.4).
- ❖ The Guidance states: “Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.” (10.14)
- ❖ Mandatory conditions must be imposed (10.27) and censorship avoided (10.17).

❖ The Guidance states: “It is still permitted to sell alcohol using promotions (as long as they are compatible with any other licensing condition that may be in force), and the relevant person should ensure that the price of the alcohol is not less than the permitted price. Detailed guidance on the use of promotions is given in the guidance document available on the Gov.uk website.” (10.60) Also, “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.” (10.21)

- 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 conditions must be tailored to the individual type, location and characteristics of the premises and events concerned. Conditions cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff and standardised conditions should be avoided where they cannot be shown to be appropriate. (1.16/1.17)
- 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 9 - 12** Members are given general advice, and also have explanations of the Council’s Licensing Policy, Government advice and other legislation relating to the matters previously identified.

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

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| Appendix 1 | A copy of the application |
| Appendix 2 | Site Plan |
| Appendix 3 | Maps of the surrounding area |
| Appendix 4 | Other licensed venues in the area |
| Appendix 5 | Section 182 Guidance by the Home Office |
| Appendix 6 | Representation of Aaron & Cleo Bartram |
| Appendix 7 | Agreement with Environmental Health (Noise) |
| Appendix 8 | Agreement with Met Police |
| Appendix 9 | Licensing Officer comments on noise while the premise is in use |
| Appendix 10 | Licensing Officer comments on access/egress Problems |
| Appendix 11 | Planning |
| Appendix 12 | Licensing Policy relating to hours of trading |