

# **FOR PUBLICATION**

**APPLICATION FOR VARIATION OF A PREMISES LICENCE**  
**BY KOO CHESTERFIELD LIMITED**  
**IN RESPECT OF**  
**KOO, 475a CHATSWORTH ROAD, BRAMPTON, CHESTERFIELD,**  
**S40 3AD. (LC180)**

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MEETING:	LICENSING COMMITTEE
DATE:	WEDNESDAY 13 <sup>TH</sup> DECEMBER 2017
REPORT BY:	LICENSING OFFICER Steve Ashby
WARD	HOLMEBROOK

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## **1.0 APPLICATION**

1.1 The Applicant is Koo Chesterfield Limited.

1.2 The premises is  
Koo,  
475a Chatsworth Road,  
Brampton,  
Chesterfield,  
S40 3AD

## **2.0 PURPOSE OF REPORT**

2.1 For Members to determine an application for a variation of a premises licence in respect of Koo.

2.2 Relevant representations have been made and not withdrawn, thus the application cannot be granted or refused under officer delegated authority.

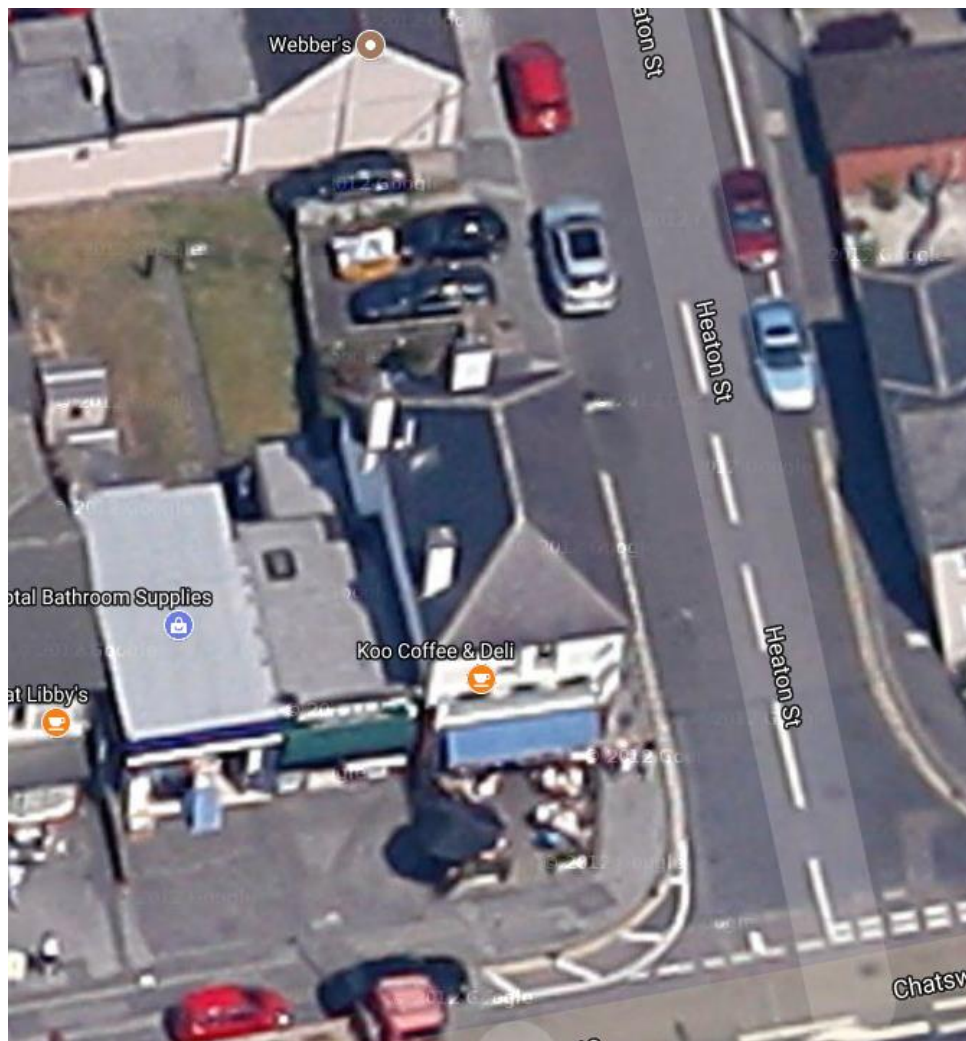
### 3.0 **BACKGROUND**

#### 3.1 Koo is a café and bistro on Chatsworth Road, Chesterfield.

The premises has an outdoor seating area to the front with a low fence boundary, which has been authorised for such use with planning permission being granted.

There is an enclosed yard to the rear with a brick wall boundary and a two vehicle car park beyond the yard. Both are considered as potential seating areas for the future.

There are no alternative planning permissions granted for these two areas.



- 3.2 The premises is currently licensed for the sale by retail of alcohol, the playing of recorded music (indoors) and the performance of live music (indoors) as below.

**The sale by retail of alcohol for consumption ON and OFF the premises**

- Mon, Tues, Wed, & Thursday 10:00 - 20:00
- Friday & Saturday 10:00 - 23:00
- Sunday 10:00 - 16:00

**Playing of recorded music (Indoors)**

- Mon, Tues, Wed, & Thursday 12:00 - 19:00
- Friday & Saturday 12:00 - 22:00

**Performance of live music (Indoors)**

- Mon, Tues, Wed, & Thursday 12:00 - 19:00
- Friday & Saturday 12:00 - 22:00

**Premises opening hours**

- Mon, Tues, Wed, & Thursday 09:00 - 20:00
- Friday & Saturday 09:00 - 23:00
- Sunday 09:00 - 17:00

- 3.3 The premises licence holder has made this application to be able to provide services in line with other local businesses on Chatsworth Road.

- 3.4 The variation application seeks to
- Add the activities of plays, films, dance and late night refreshment to the licence.
  - Extend the scope of licensable activities to include the outside areas at the front and rear of the premises
  - Amend the premises operating schedule to remove some outdated conditions and insert greater control measures to address the additional licensable activities requested.
  - Extend the permitted hours of licensable activities at the venue as shown in the following table.

	Monday to Thursday	Friday	Saturday	Sunday
Indoor and outdoor <ul style="list-style-type: none"> <li>• Plays</li> <li>• Films</li> <li>• Live Music</li> <li>• Recorded music</li> <li>• Performance of dance</li> <li>• Late Night refreshment</li> </ul> Opening Hours	08.00 am to 01.00 am	08.00 am to 01.30 am	09.00 am to 01.30 am	09.00 am to 01.00 am
Sale and supply of alcohol (on and off the premises) inside the premises and on the outside spaces to the front and rear	08.00 am to 12.30 am	08.00 am to 01.00 am	09.00 am To 01.00 am	09.00 am To 12.30 am
Outside licensable activities	All licensable activities will cease outdoors at 11.00 pm (although consumption of alcohol may continue)			
Non-standard timings for <ul style="list-style-type: none"> <li>• Recorded music</li> <li>• Late night refreshment</li> <li>• Sale and supply of alcohol</li> </ul>	On New Year's Eve only, the premises will be open from 01.00 am until opening hours on New Year's Day where opening times will resume in line with normal opening hours.			

## **4     APPLICATION**

- 4.1   A copy of the application form and plan are attached as Appendix 1 and 1a.  
The current Premises Licence is attached at Appendix 2.
- 4.2   Applications for a variation of a Premises Licence are required to be advertised by way of
- site notice displayed at the premises
  - an advert in the local press
  - copies of the application submitted to all Responsible Authorities
  - a copy of the application posted on the Chesterfield Borough Council's Licensing Authority website page.
- 4.3   A copy of the appropriate local press advert taken from the Derbyshire Times on Thursday 2<sup>nd</sup> November 2017 is attached at appendix 3.
- 4.4   The site notices displayed on the premises, advertising the application were viewed by licensing enforcement staff on 4<sup>th</sup> November 2017. They were found to be displayed correctly and completed appropriately.
- 4.5   The application was submitted on line through the internet and as such, the Chesterfield Borough Council Licensing Authority circulated a copy of the application to the responsible Authorities.
- 4.6   The application was posted on Chesterfield Borough Council's website.
- 4.7   The statutory deadline for representation was 24<sup>th</sup> November 2017.

## **5     REPRESENTATIONS**

- 5.1   Responsible Authorities and Interested Parties (persons/bodies representative of businesses or residents in the vicinity of the premises) are entitled to make representations to the Licensing Authority provided they are relevant representations.

- 5.2 Any representation received should be neither frivolous nor vexatious. The representations must be relevant to the likely effect of the proposed variation on the promotion of at least one of the 4 licensing objectives which are
- (1) the prevention of crime and disorder
  - (2) public safety
  - (3) prevention of public nuisance
  - (4) the protection of children from harm.

Representations which are not relevant must be rejected.

- 5.3 If a representation has been made but is subsequently withdrawn, it is no longer a relevant representation and provided there are no other relevant representations the application can be dealt with under officer delegated authority.

- 5.4 Seven letters or e-mails of representation have been received in total in respect of this application, one of which has subsequently been withdrawn.

## **5.5 Representation from Pollution Control**

- 5.6 An e-mail of representation was received from Chesterfield Borough Council Pollution Control Officer Mr Andrew Daley. This e-mail can be seen at appendix 4.

- 5.7 Mr Daley's representation was made in relation to the Prevention of Public Nuisance licensing objective. His representation related to the fact that if the licence variation were granted, it would allow regulated entertainment outside the premises to the front and rear. He stated

- The front seating area at Koo is directly adjacent to the street. Any loudspeakers placed in this area would be in contravention of legislation contained in the 1974 Control of Pollution Act, which specifically prohibits such activity.
- Allowing entertainment in the rear courtyard of the premises would introduce more noise to local residents and would likely give rise to complaints of nuisance.

In conclusion Mr Daley stated he would not want to see any of the outside areas at the premises used for regulated entertainment.

5.8 The representation was drawn to the attention of the applicant and after discussion; the application was amended with the following agreed change.

- No regulated entertainment will take place at the front of the premises.
- Regulated entertainment on the outside area at the rear of the premises will consist only of incidental recorded music until 11.00 pm with the volume turned down at 6.00 pm.
- Live amplified entertainment will be specifically excluded from this area.

5.9 The amendment to the application satisfied the concerns of Mr Daley who subsequently withdrew his representation.

### **5.10 Representations from Local residents**

5.11 Six letters and e-mails of representations have been received and accepted from local residents. Redacted copies of the representations are shown at Appendices numbered 5 to 10.

5.12 These representations address the prevention of crime and disorder, public safety and prevention of public nuisance licensing objectives. They raise concerns in respect of a number of issues:

#### Change of use of the premises

- The application would change the premises (which was originally a delicatessen) from its current form as a café / bistro to something totally different i.e. a regular late night venue with very late opening on Fridays, Saturdays and Sundays with music.
- This change is unacceptable in a quiet, residential area.
- There is insufficient space to accommodate the evolution of the premises into a cross between a restaurant, a cinema, a theatre and a night club. Previous functions at the premises (not exclusively in warm weather) have resulted in patrons overflowing onto the pavements outside the premises, causing obstruction and forcing pedestrians to walk in the road to get passed.

#### Noise and disturbance

- This is a residential area. The increased hours would pose a detrimental effect to the neighbourhood in terms of noise pollution and extended alcohol consumption.

- Noise from the premises is absorbed into the sounds of the busy traffic on Chatsworth Road during the day and early evening but this would not be the case at night.
- Activities in the outside area will face residential properties.
- Loud music is already played in the premises to the annoyance of nearby residents; any extension will only make matters worse – becoming more frequent and later.
- As functions wind down later at night, there will be a congregation of attendees outside, leading to disturbance and loud (sometimes drunken) chatter, flirting, arguments, phone calls, car horns and slamming doors. Most of Koo's nearby neighbours are elderly, aren't up late and so will be disturbed.
- Late night opening will result in doors and windows of the premises being left open which will allow voices and music to carry to nearby properties.
- The premise is predominantly not used by local residents and so there is no local benefit to these changes.

#### Parking

- Parking is a key issue. Space is very limited in the vicinity. Longer hours would put a strain on already congested streets.
- The immediate area around the property is heavily congested and residents already find it difficult to park. Koo customers are reported to have parked across resident's driveways and if asked to move, have responded with aggressive verbal abuse and profanity.

#### Nonstandard timings

- The non-standard timing for New Year is totally unacceptable.

#### Consultation

- One of the representations raised a concern that a single notice displayed on the premises was insufficient to advertise the application, that the notice was too small and that there was no consultation between the applicant and nearby residents.



### Suggested alternative

- A proposed change of hours was included in one of the representations which suggested
  - Live music, late night refreshment and dancing (indoors and outdoors) cease at 11.00 pm from Sunday to Thursday and midnight on Friday and Saturday.
  - The sale and supply of alcohol cease
    - at 10.30 pm from Sunday to Thursday
    - at 11.30 pm on Friday and Saturday indoors
    - and at 10.30 pm on Friday and Saturday outdoors.

### **5.13 Information from Chesterfield Borough Council Planning Department**

5.14 Whilst no representation was received from the planning department an e-mail was forwarded which identified the following information.

- The seating area at the front of the premises received planning permission to be used for this purpose in 2007.
- Neither the yard at the rear of the premises nor the car parking spaces beyond the yard currently have planning permission that would enable the use which this application seeks to licence.

5.15 This e-mail can be seen at appendix 11.

## **6.0 ADDITIONAL INFORMATION**

6.1 As part of the application process the applicant is required to describe in the operating schedule the additional steps that are intended to be taken in order to promote the licensing objectives for the variation of the licence that has been requested.

6.2 The applicant has proposed significant changes to the operating schedule.

6.3 The original operating schedule is attached at appendix 12.

6.4 Some of the changes serve to update the licence by removing unnecessarily bureaucratic requirements. The additional conditions volunteered below are intended to provide greater control

measures to address the changes proposed in the variation application.

The proposed new operating schedule can be seen at appendix 13 and the main changes are summarised below.

### General

These two conditions serve to preserve the current nature of the premises and guard against it's future development into an HVVD (high volume vertical drinking) establishment.

- The occupancy will be 50% seated customers and substantial food will be available during all alcohol licensed hours.
- Sales of alcohol will be ancillary to the main use of the venue as a food establishment.

### Prevention of Crime and Disorder

The conditions here are intended to deter excessive consumption of alcohol, prevent removal of alcohol from the premises other than in sealed containers and provide a structured use of CCTV.

- Koo's primary purpose is as an eating establishment therefore food and snacks are always readily available to customers.
- All off-sales will be supplied in sealed containers only
- External tables will be provided with notices informing customers not to consume any drinks beyond the external dining area/curtilage of the premises
- "Drinking up time" will be allowed for customers consuming alcohol in keeping with our stated closing times.
- CCTV will be in place both inside and outside the venue. Any CCTV footage or images will be retained for 30 days and will be supplied to a Police Officer or an Officer of a Responsible Authority upon request.

### Prevention of Public Nuisance

These additional conditions concentrate on minimising the impact of the premises on it's neighbours.

- The licence holder and management shall take a proactive approach to noise control and where appropriate shall monitor sound levels inside and carry out patrols outside the premises to ensure that noise levels do not cause noise nuisance to local residents or businesses.
- We will pay appropriate regard to noise sensitive premises and the volume of music will be under the control of

management and will be controlled to prevent noise nuisance to our neighbours.

- There will be signage to caution customers from making noise when leaving the premises and to leave in a considerate manner. When it is deemed necessary by management, members of staff will be assigned to the exit door at the end of business to remind customers to leave quietly, thereby respecting our neighbours.
- The licence holder will ensure that any litter in the immediate vicinity of the premises is cleared on a daily basis and as far as is practicable we will ensure that the premises and surrounding areas are tidy.

#### Protection of children from harm

The challenge 25 age verification policy is adopted along with a system of training which will be documented.

- Full training is provided to staff on commencement of employment on relevant current legislation, and any system or procedures they are expected to follow in the course of their working capacity.
- Training updates will be provided at regular intervals (at least six monthly) with records detailing the training provided to be kept on the premises for a minimum of two years for production, on request, to a Constable or an authorised officer of a Responsible Authority.
- A 'Challenge 25' or (similar) Proof of Age Scheme will be operated. Anyone attempting to purchase alcohol who appears under the age of (25) years will be asked for proof of age; acceptable forms of ID being PASS Accredited card, photo driving licence or passport.
- Failure to produce satisfactory proof of age will result in a refused sale. Clear prominent and unobstructed signage of the scheme will be displayed at all public entry points and at points of sale.
- A system of recording all sales refused will be operated at all times. At least weekly, the Designated Premises Supervisor (or authorised deputy) will examine the record and compare it against the normal operating pattern for the premises, indicating any action taken in relation.
- The refusal record shall be kept on the premises for a minimum period of two years for production, on request, to a Constable or an authorised officer of a Responsible Authority.

## **7 OPTIONS**

- 7.1 When carrying out its licensing functions, the Licensing Authority must do so with a view to promoting the 4 licensing objectives and also with regard to its Statement of Licensing Policy and the guidance issued by the Secretary of State under section 182 of the Licensing Act 2003.
- 7.2 The Licensing Committee may
- grant the application as requested
  - grant it subject to conditions
  - or refuse the application.
- 7.3 Where either the applicant or a person who made relevant representations is aggrieved by the decision of the Licensing Authority, appeal is to the Magistrates' Court.

## **8 RECOMMENDATION**

- 8.1 That the Committee
- Give consideration to
    - the content of the application
    - the representations made by local residents
    - the agreed amendment to the application after the withdrawn representation by the Chesterfield Borough Council Pollution Control Officer
  - and determine whether this application be granted, granted with conditions, or refused.



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LICENSING OFFICER

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