

For publication

**Application for a New Premises Licence by The Birdcage
Chesterfield Ltd, in respect of
The Birdcage, 35 Derby Road, Chesterfield, S40 2EF (LC170)**

Meeting: Licensing Committee

Date: Wednesday 13 May, 2020

Cabinet portfolio: Health and Wellbeing

Report by: Steve Ashby, Licensing Officer

For publication

1.0 Purpose of report

1.1 To enable determination of the application made by Tim Vice on behalf of The Birdcage Chesterfield Ltd for a new premises licence in respect of

The Birdcage,
35 Derby Road,
Chesterfield,
S40 2EF.

1.2 Relevant representations have been made in respect of the application and not withdrawn. Consequently, the application cannot be granted or refused under standard officer delegated authority.

1.3 Copies of the Application Form and premises plan are attached to this report at Appendix 1 and 2.

2.0 Recommendation

2.1 That the Committee hear details of this licence application and determine whether it is:

- granted as requested
- granted subject to conditions
- or refused.

3.0 Report Details

3.1 The premise is a two-storey building, with a ground floor retail area and accommodation on the first floor. As can be seen from the photograph below, the premises previously operated as a corner shop and takeaway.



3.2 It is situated at the junction of A61, Derby Road and Lord Roberts Road.

Derby Road is a main arterial route through Chesterfield with high volumes of vehicle use, carrying commuters, public transport and commercial traffic.

Lord Roberts Road is an access only residential street. This means vehicular traffic on the street should be limited to residents and bona fide visitors to the premises thereon.

- 3.3 The photograph below shows the relevant location of the premise which whilst located on a busy road, is also surrounded by residential properties.



4.0 **Application**

- 4.1 The application received in Licensing on 21st February 2020 is for a Premises Licence to establish a licensed café at 35 Derby Road. The applicant describes it as a “Licensed coffee shop, serving hot and cold drinks as well as food.”
- 4.2 The application seeks the following licensable activities
- Sale and supply of alcohol (both on and off the premises) daily between 11.00 am and 11.00 pm.
 - indoor sporting events, live and recorded music (indoors) daily between 07.00 am and 11.00 pm
 - Non-standard timings are sought for all licensable activities and opening hours which states “Extend until

1am on days preceding bank holidays, on bank holidays and on boxing day and New Year's Day".

- Opening hours of the premises are identified as daily between 07.00 am and 11.00 pm.

- 4.3 Late night refreshment is also referred to in the initial part of the application form, but no licensable hours nor non-standard timings are sought in relation to the activity.
- 4.4 It is worth noting the current hours sought would not require a late-night refreshment permission in any case. The terminal hour for all activities at the premises ends at 11.00 pm and no licence is required for late night refreshment until after 11.00 pm.
- 4.5 It is also worth noting that indoor provision of live and recorded music is already permitted on licensed premises between 08.00 am and 11.00 pm by virtue of the Live Music Act of 2012. Although permission for live and recorded music is sought between 07.00 am and 11.00 pm, only the period of 07.00 am to 08.00 am falls outside the scope of this legislation in this application.
- 4.6 Applications for a new Premises Licence are required to be advertised by way of an advert in the local press, a site notice displayed at the premises and copies of the application submitted to all Responsible Authorities.
- 4.7 The appropriate local press advert appeared in the Derbyshire Times on Thursday 5th March 2020.
- 4.8 The site notices displayed on the premises, advertising the application were viewed by licensing enforcement staff on 25th February 2020 and found to be displayed correctly and completed appropriately.

- 4.9 The application was submitted online through the internet and as such, the Chesterfield Borough Council Licensing Authority circulated a copy of the application to the responsible Authorities.
- 4.10 The statutory deadline for representation was 20th March 2020. Responsible Authorities and Interested Parties are entitled to make representations to the Licensing Authority provided they are relevant.

A number of representations have been received and accepted from local residents and from Derbyshire Police in relation to one or more of the licensing objectives which are: -

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

Redacted copies of the messages of representation are shown at Appendices numbered 3 to 11.

- 4.11 The representations received from local residents regarding this application express concerns over:
- The possibility of antisocial behaviour due to drink. The past history of bars in this area has shown this in the past.
 - The possibility of antisocial behaviour due to drugs
 - Concerns about litter (bottles, cans etc)
 - Those making representations report that parking is already an issue for the local residents and this premises would make things worse. Residents already struggle to park outside their own houses.
 - Concerns about noise and loud music being played late at night and early in the morning. Particularly problematic for shift workers and those with young families.

- Increased traffic problems. Those making representations report that road is already a “rat run” with drivers trying to avoid congestion on Derby Road. It is also subject to parking by residents and visitors of other streets. Traffic would worsen with this application and with the number of parked cars on the street, there is always the possibility of a child running between cars and being injured.

4.12 The Police representation (Appendix 11) refers to the proposed operating schedule for the premises.

4.13 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 new premises licence that has been requested.

4.14 Under the Licensing Act 2003 these volunteered proposed steps will be attached to the premises licence as conditions which must be complied with. These are set out in Part M of the application form.

4.15 PC Hussain of Derbyshire Police submitted his representation stating, “It’s the opinion on Derbyshire police licensing that the operation schedule submitted does not adequately address the licensing objections in particular Crime and disorder and Prevent of Public Nuisance.”

4.16 PC Holden of Derbyshire police went on to identify three additional conditions that if added to the licence operating schedule would satisfy the police concerns. These were

- Under prevention of crime and disorder - SIA qualified door supervisors will be deployed on a risk assessed basis. Such risk assessments will be retained for a period of 3 years and will be produced to an officer of a responsible authority upon request.

- Under prevention of public nuisance - Alcoholic and other drinks may not be removed from the premises in open containers save for consumption in any external area provided for that purpose. Any such external consumption area will be supervised by premises staff.
- Under prevention of crime and disorder - CCTV is installed at the premises to cover the public areas of the premises. CCTV recording and images shall be retained for a period of 30 days and produced upon request to an officer of a Responsible Authority.

4.17 The applicant has agreed to these conditions being added to the licence. Should the committee agree to their addition to the operating schedule, this will satisfy any concerns the police have about the venue.

4.18 The applicant states he has recently written to a local resident to assure them of his intentions. He has supplied a copy of this letter which is included at appendix 12. He states that had he had the opportunity; this is what he would have told local residents.

4.19 In summary he describes a community hub type venue being operated sympathetically towards local residents with strict controls around behaviour and noise nuisance.

He goes on to say that he will be operating his own business from the adjacent premises and thus has a personal interest in making sure that this one does not cause nuisance or offence.

He concludes by saying that the property was always going to be a commercial enterprise and that his application is probably far less intrusive than other uses for the property might have been.

5.0 **Additional Information**

- 5.1 Under the emergency arrangements approved by Standards and Audit Committee on 19 March, 2020 and enacted by the Chief Executive on 20 March, 2020, consideration of this application was delegated to the Assistant Director – Health and Wellbeing on 8 April, 2020. As it was not possible to invite parties to physically attend a hearing at this stage, they were invited to submit any additional information in writing.
- 5.2 This additional information was distributed to all parties and incorporated in to four supplementary reports which were published prior to the Assistant Director’s consideration of the application on 8 April, 2020. The content of those four reports is reproduced in sections 6 – 9 of this report below.
- 5.3 The Assistant Director’s decision on 8 April, 2020 was that consideration of the application be deferred to 29 April, 2020, when it was again deferred to 13 May, 2020.

6.0 **Additional Information – 3 April, 2020**

- 6.1 In response to the circulation of the hearing papers on 1st April 2020, we have received a further submission from a representor and also from the applicant. The applicant forwards several photographs showing quiet streets around the venue. The representor points out the perceived detrimental impact upon existing business and family life in the area.
- 6.2 Their comments are copied in below.
- 6.3 **Additional comment from a representor**

The report I see relays the concerns I expressed re traffic, parking, noise & anti social behaviour.

I'd like to add/mention another factor that I mentioned that this type of enterprise simply isn't needed with the venues so close by such as Derby Road Deli & the One Stop Costa machine. It's baseless economically and I'm sure these other businesses are not happy. Forgive me if that point was mentioned in your report & I missed it.

The business owner's assertion that his office will be next door is baseless. He will not be a resident & there that often.

I further don't accept it will be beneficial to the street scene. Litter, people congregating would have the exact opposite effect. There would be much better options.

To conclude, for the peace of mind & quality of life for residents the unit is CLEARLY best for a daytime enterprise only with a swift footfall/turnaround. Derby Road does not need it - it's at its limit for traffic and antisocial behaviour WOULD ensue. I would urge a total rejection of any music & alcohol licence. Coffee shops don't have alcohol do they for takeaway, or for having on premises.

6.4 **Additional comment from the applicant**

I might just add the following, I have been taking pictures at different time of the day and have noted that the streets in this area are almost empty. There are no council parking restrictions such as permits etc! or yellow lines, I do not feel that parking is a valid issue. I expect our busy times to be Saturday and Sunday, on these days the Derby Road Deli which operates on the opposite corner is closed and there is nearly a full one side of these street with empty car parking spaces. In addition if parking outside a property is privilege then we can get at least 3 outside the corner shop and 4 in the rear car park!! So 7 cars can park without even impacting on the street.

Not sure this helps but just thought I would mention it.



I have attached some pictures, these have been taken at various times of the day and are the immediate surrounding streets. As you can see the area is quiet, this can be easily witnessed by anyone driving wishes to take a drive down this area. Having worked in the area for some weeks I can also confirm never seeing anyone using the road as a rat run!!



The picture above shows a delivery we had on a Saturday morning!! you can see that we was not struggling for a parking space.

7.0 **Additional Information – 6 April, 2020**

7.1 In response to the circulation on Friday 03.04.2020 of the additional comments received after 1st April's circulation of our hearing papers, we have received further submissions from representors and from the applicant.

7.2 Their comments are copied in below.

7.3 **Additional comment from representors**

Further comment from a representor 03.04.2020

I have a further comment to add in respect of the photos taken that supposedly show quiet traffic and parking issues.

Those were clearly taken recently which will obviously show no traffic!! The nearby Redvers Buller Road is usually completely full up at least halfway up to Dundonald road with cars and the main road even has parked cars usually too. They say they can park 3 cars in front of the shop itself - that would mean they would have to drive up onto the pavement which if that's happening throughout the day isn't safe for pedestrians and the road is also a cycle path.

Furthermore I would like to also request the hearing be deferred until a suitable time where we can make face to face representation.

Thank you.

Further comment from a representor 03.04.2020

Dismayed to see this latest info - it is NOT the case that Derby Road is quiet and that there is ample space for parking on the busy main road. Derby Road quiet? Simply not so and I'm a resident. And people would be staying longer there. Plus the later hours business would continue.

Derby Rd Deli serves the area sufficiently and opens daytime only.

Further comment from a representor 03.04.2020

And here is illustration of what parking is like on Lord Roberts Rd - not much room is there??! And there is NOT sufficient parking space on the main Derby Road there.





Further comment from a representor 03.04.2020

The pictures he has taken are in most likely taken when most people are out at work, and as for the delivery on the Saturday morning the men that was working on the premises at the time had to come knocking on doors to move cars that was parked on the street as the proprietor will have knowledge of. As for the road being used as a rat run it is at the busiest time off day when derby road is nose to tail in the rush hour. The residents are not liars we have this to put up with most days and feel a bar will only add to the pressure we are all under, also a few we'll Chosen pictures so how he's attempting to sugarcoating the issue

7.4 Additional comment from the applicant

I would appreciate that the meeting is not deferred, we are currently paying rent on the building and have already had to cancel many pre made bookings due to the Corona virus. Further delays may result in further cancellations or even the business being left in a dire financial state. The sooner this is concluded the better.

8.0 **Additional Information – 7 April, 2020**

- 8.1 In response to the circulation of newly received comments 06.04.2020, we have received further submissions from representors and from the applicant.
- 8.2 The latest comments have required redaction and are therefore included in the attached document at appendix 13.
- 8.3 The latest comments include a further statement from a representor, a statement from the applicant and two comments from local residents that the applicant received after he circulated a letter to nearby residences.

9.0 **Additional Information – Final 7 April, 2020**

- 9.1 These are the last comments to be accepted from interested parties in relation to this application. These have all been received on 07.04.2020.
- 9.2 The comments are copied in below.
- 9.3 **Final comment from representors**

Final comment from a representor 07.04.2020

If today is the final day to object I have to say a few final things please

- 1) The owner states that he expects it to be used by local people which would negate the issue of no parking. Most of the residents do not want this to go ahead so he won't have a client base.
- 2) We should be given time to make proper representation. We can't go door to door to do a petition in the current climate. We are all having financial issues so although we understand the

impact this will have on the owner, we are all in the same situation.

3) The noise issue hasn't been addressed correctly. It's a very vague "we may have a solo guitar player" If the license is given then this is open to huge mis interpretation and by then it's too late.

4) The high definition cameras and the owners "we will not tolerate antisocial behaviour" does not do anything to quell my belief that the area this is proposed to be in - MY area - an already disadvantaged area - will then be having to reactively deal with the issues that WILL arise

5) The police asked for license doormen in their objections. Apologies if I have missed any further reference to this but I haven't seen anything about this.

Final comment from a representor 07.04.2020

Again the Applicant is trying to say there is no issue with parking on the street does he not Realise cars will not be there if the owners are out at work?, also I have lived on the street for many years and I don't know of any car salesman with cars on Lord Roberts Road.

Final comment from a representor 07.04.2020

Thanks for the update. The applicant states again his office would be right next door. As previously stated the applicant is not a resident and would be out working. Things seem to be mentioned again already addressed/represented. Do I read correctly it's envisaged accommodating 30 people? No way there would be parking for that. Not on the main road or the nearby streets. Even 10 would just be impossible. I also have to keep stressing this - this unit needs to be a daytime inky/quick footfall enterprise. For consideration of residents and there just is nor parking space.

Thank you.

That should read daytime only enterprise & no parking!

10.0 **Additional Information from Applicant – 4 May, 2020**

- 10.1 Mr Vice has viewed articles which have appeared in the Derbyshire Times newspaper. These reported on the Premises Licence and Planning Permission applications which had been submitted to Chesterfield Borough Council. The applicant reports that the articles invited readers to comment on the applications on the Derbyshire Times Facebook page.
- 10.2 Mr Vice has viewed the Derbyshire Times Facebook page and taken screen shots of various comments from it, most of which are positive. He has then forwarded these to the Licensing Department on Monday 4th May 2020, along with some photographs. The photographs have apparently been taken at various times of the day during the Covid-19 lockdown period.
- 10.3 The Facebook posts have been redacted to anonymise them as much as possible and have been included, along with the latest photographs at Appendix 14.

11.0 **Conclusion**

- 11.1 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.
- 11.2 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.

11.3 As relevant representations have been made in respect of the application and not withdrawn, the application cannot be granted or refused under officer delegated authority.

12.0 **Recommendation**

12.1 That the Committee hear details of this licence application and determine whether it is:

- granted as requested
- granted subject to conditions
- or refused.

Steve Ashby
LICENSING OFFICER
04.05.2020

For more information on this report please contact the author,
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