

## REPORT TO LICENSING & APPEALS SUB-COMMITTEE

Agenda Item

3.

Hearing Date: 28<sup>th</sup> August 2013

Contact Officer: Ruth Boam – 01283 595716

### HEARING OF A REVIEW APPLICATION OF A PREMISES LICENCE UNDER THE LICENSING ACT 2003

<b>Applicants Name</b>	Mr Roger Harrison
<b>Licence Holder</b>	Marston's PLC
<b>Premises Name</b>	Alma Inn
<b>Address</b>	59 Derby Road, Melbourne, DE73 8FE

#### 1. PURPOSE

To determine a review application relating to the existing premises licence for the above premises received by this Authority from Mr Roger Harrison. Mr Harrison is entitled to submit a review application under the category of an "other person" (**application attached at Appendix 1**) pages 5 to 22.

#### 2. CONSULTATION RESPONSES

2.1 Responsible Authorities - None

2.2 Other Parties - Written representations supporting the applicant have been received from the following persons during the 28 day consultation period. Full details can be found in **Appendix 2**.

Mr Spear, South Street, Melbourne, Derby, DE73 8GB	Appendix 2 pages 23 to 28
Councillor Jim Hewlett, The Lilypool, Melbourne, Derby, DE73 8GL, and Councillor John Harrison, 55 Penn Lane, Melbourne, Derby, DE73 8EQ (Joint Rep)	Appendix 2 pages 29 to 34
Mr Roger Harrison, Cottage Antiques, 34 Derby Road, Melbourne, Derby, DE73 8HE	Appendix 2 pages 35 to 44
Person A	Appendix 2 pages 45 to 54

No other representations have been received.

### **3. ADDITIONAL INFORMATION**

- 3.1 Mr Roger Harrison has provided additional evidence to support his application. This can be found in **Appendix 3** pages 55 to 112.
- 3.2 John Gaunt and Partners have provided a response to the initial application on behalf of the licence holder. This can be found in **Appendix 4** pages 113 to 119.
- 3.3 A copy of the current premises licence for the Alma Inn including the conditions that must be complied with can be found in **Appendix 5** pages 120 to 131.

### **4. RELEVANT CONSIDERATIONS**

- 4.1 The Authority should consider its responsibilities under the Crime and Disorder Act 1998, and the Human Rights Act 1998 when determining the application.
- 4.2 Any decision taken by the Sub-Committee must be appropriate and proportionate to the objective being pursued.
- 4.3 Members are reminded that whenever they make a decision under the Licensing Act 2003, they have a duty to act with a view to promoting the licensing objectives.
- 4.4 When considering any representations, only those issues relating to the four licensing objectives should be considered and appropriate weight given to the importance and relevance to the application of each representation.
- 4.5 Positive representations must be treated in the same way as negative representations.
- 4.6 In making its decision, Members must also have regard to the Statutory Guidance issued under section 182 of the Licensing Act 2003 and the Council's own Licensing Policy. If Members depart from either, they must specify their reasons for doing so.

### **5. DETERMINATION**

- 5.1 The Sub-Committee must take such of the following steps as it considers appropriate for the promotion of the licensing objectives:
  - 1. Modify the conditions of the operating schedule by altering, omitting or adding to them.
  - 2. Exclude a licensable activity from the scope of the licence
  - 3. Remove the Designated Premises Supervisor (DPS).
  - 4. Suspend the licence for a period not exceeding three months.
  - 5. Revoke the licence.
- 5.2 Where the authority takes a step mentioned in section (8.1)(1) or (2), it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify. For the avoidance of doubt if no time period is mentioned the effect is to be considered permanent.

5.3 Members are asked to note that they must only consider taking one or more of the actions above, if they consider it:

1. Appropriate to do so in order to promote the licensing objectives
2. Proportionate to what it is intended to achieve
3. Relates to an outstanding representation made.

## **6. RIGHT OF APPEAL**

6.1 Members should note that the applicant, or persons making representations, or the Licence Holder have the right of appeal against any decision made by the Sub-Committee.

6.2 Members should also note that their decision does not have effect until the time for bringing an appeal has expired or, if an appeal is lodged, until the determination or withdrawal of the appeal.

## **7. APPENDICES**

1. Application for a premises licence to be granted under the Licensing Act 2003 – pages 5 to 22.
2. Other representations – pages 23 to 54.
3. Additional documentation supplied by Mr Roger Harrison – pages 55 to 112.
4. Initial response from John Gaunt and Partners on behalf of the licence holder – pages 113 to 119.
5. Current Premises Licence – pages 120 to 131.

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South Derbyshire  
District Council

[Insert name and address of relevant licensing authority and its reference number (optional)] 04 JUL 2013

Application for the review of a premises licence or club premises certificate under the  
Licensing Act 2003

Corporate Services

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form.  
If you are completing this form by hand please write legibly in block capitals. In all cases ensure  
that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.  
You may wish to keep a copy of the completed form for your records.

I ROGER HARRISON

(Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club  
premises certificate under section 87 of the Licensing Act 2003 for the premises described in  
Part 1 below (delete as applicable)

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description

THE ALMA INN  
59 DERBY ROAD  
MELBOURNE

Post town

DERBYS

Post code (if known)

DE73 8FE

Name of premises licence holder or club holding club premises certificate (if known)

MARSTONS PLC.

Number of premises licence or club premises certificate (if known)

SDDC/001975

Part 2 – Applicant details

I am

Please tick ✓ yes

1) an individual, body or business which is not a responsible  
authority (please read guidance note 1, and complete (A)  
or (B) below)



2) a responsible authority (please complete (C) below)



3) a member of the club to which this application relates  
(please complete (A) below)



5.

Please tick ✓ yes

**Surname**

### First names

Please tick ✓ yes



## Post town

**Post Code****Daytime contact telephone number**

*[Handwritten signature]*

## Name and address

E-mail address (optional)

**(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT**

Name and address
Telephone number (if any)
E-mail address (optional)

**This application to review relates to the following licensing objective(s)**

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

Please tick one or more boxes ✓

<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>

Please state the ground(s) for review (please read guidance note 2)

PLEASE SEE THE ATTACHED PAGES 1 to 9

IT IS INTENDED TO PRODUCE EVIDENCE IN SUPPORT OF THESE GROUNDS FOR REVIEW FOR INCLUSION IN THE REPORT TO THE LICENSING COMMITTEE AND FOR PRESENTATION AT ANY NECESSARY HEARING. IT IS ALSO INTENDED TO EXPAND UPON THIS EVIDENCE AT ANY NECESSARY HEARING.



Please provide as much information as possible to support the application (please read guidance note 3)

PLEASE SEE THE ATTACHED PAGES 1 to 9.

IT IS INTENDED TO PRODUCE EVIDENCE IN SUPPORT OF THESE GROUNDS FOR REVIEW FOR INCLUSION IN THE REPORT TO THE LICENSING COMMITTEE AND FOR PRESENTATION AT ANY NECESSARY HEARING. IT IS ALSO INTENDED TO EXPAND UPON THIS EVIDENCE AT ANY NECESSARY HEARING.

Have you made an application for review relating to the premises before

Please tick ☒ yes



If yes please state the date of that application

Day Month Year

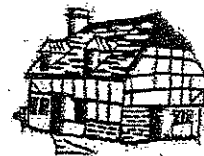
15 03 2007

If you have made representations before relating to the premises please state what they were and when you made them

*Representations were made by the applicant at the initial application for a licence stage, as per the copy letter overleaf dated 12<sup>th</sup> September 2005.*

# Cottage Antiques

34 Derby Road Melbourne Derby DE73 1FE  
Telephone:



Antique Fine & Country Furniture - Anything Old Bought & Sold

Environmental Health Dept  
SDDC  
Civic Offices  
Swadlincote

12/09/05.

RE : Application for extended opening hours 'THE ALMA PUBLIC HOUSE, Derby Road, Melbourne, Derbys.

AS a close neighbour of the above premises i.e. within 100yds I would like to object to the application to extend the hours of the above public house.

Grounds :- THE ALMA is situated in a densely populated residential area of the town, has a history of disorder resulting in police attendance and in particular has a history of considerable live music being played on the premises which lack any soundproofing.

The application requests the ability to provide entertainment when the premises are open for the sale of alcohol. Surely the provision of entertainment and late licensing are two separate issues. I have no objection to people drinking alcohol into the early hours, but when this is combined with entertainment that will inevitably be of the loud noisy variety such as live bands, Karaoke evenings and thumping Juke Boxes then this is a different issue. Surely there already exists legislation that prohibits the playing of loud music past the hour of 11.00 pm. Does this new legislation allowing pubs to open later override this?

In summary provided that a new later license does not include the provision to provide entertainment past the existing hour of 11.00 p.m. then I have no objection to people drinking themselves silly to whatever hour in an orderly fashion. Only when this results in acts of public disorder will this be a problem, and the proof of the pudding will be in the eating.

Yours sincerely

Roger Harrison

yes

Please tick ✓

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate ☒
- I understand that if I do not comply with the above requirements my application will be rejected ☒

**IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION**

**Part 3 – Signatures** (please read guidance note 4)

**Signature of applicant or applicant's solicitor or other duly authorised agent** (please read guidance note 5). If signing on behalf of the applicant please state in what capacity.

Signature

Date

Capacity

**Contact name (where not previously given) and postal address for correspondence associated with this application** (please read guidance note 6)

ROGER HARRISON.  
34 DERBY ROAD  
MELBOURNE

Post town

DERBYS

Post Code

DE73 8FE

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)

**Notes for Guidance**

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.

## THE APPLICATION

This application is made in accordance with section 11.1 of the Section 182 guidance:

*"The proceedings set out in the 2003 Act for reviewing premises licenses and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate".*

It is also made in accordance with the **"Fall back Position"** agreed between residents/other people and the Derbyshire Licensing Police that formed part of the documented mediation process put in place in July 2012.

*"Should no agreement be reached through your actions as mediator between the Licensee and residents/other persons then the already proposed and agreed meeting would be the course of action in the first instance, and in the absence of any agreement arising from this an application to review the licence would be made in any event."*

This application is made in the absence of any agreed settlement arising from the documented mediation process designed to negate the need for an application to be made in the first instance.

## GROUNDS FOR REVIEW

The attached grounds for review are made in accordance with section 51 subsection (4) (a) of the Licensing Act and section 11 subsection 11.2 of the section 182 Statutory Guidance.

In accordance with section 51 subsection (4) (a) the attached grounds are **"relevant to one or more of the Licensing Objectives."**

The application is also made in accordance with section 11.2 of the statutory guidance:

*"At any stage, following the grant of a premises licence or club premises certificate, a responsible authority or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives".*

## Ground 1:

The repeated and consistent breaches of the conditions of the licence, crime and disorder, disturbance and public nuisance since the previous review/appeal in February 2008. Culminating in complaints of crime and disorder/nuisance and disturbance in January/February 2012, the notification by residents/other people of their intention to seek a review in February 2012 to the Licensing Police and the Licensing Authority and the subsequent major incident in March 2012 (Police incident No 832 of the 10<sup>th</sup> March 2012) when further breaches of the conditions of the licence and other offences lead to the setting alight of Alec Judge resident of Melbourne and the assault of another patron on the premises, necessitating the attendance of The Police and Ambulance service coupled with further complaints to the licensing authority. This incident gives rise to the introduction of a temporary action plan (still in place) introduced by the Police imposing further sanctions on the premises inclusive of the strict smoking and drinking requirements for all external areas so as to avoid any further recurrence of previous problems and a commitment to residents from the Licensee through Peter Barrow Licensing Officer not to hold any further live entertainment events.

This ground is supported by extensive video evidence (not intended to be exhaustive) and letters and emails of complaint. To be produced/expanded upon and presented to the licensing committee at any necessary hearing.

The licensing Authorities own records should include a number of both verbal and written formal cautions in this time relative to multiple offences coupled with the Police also having cautioned and spoken to the Licensee/Premises supervisor in February 2012 and the resulting actions following the incident with Alec Judge in March 2012 and previous complaints up to and including April 2013.

## Ground 2:

The ultimate failure in May 2013 of the Police intervention as mediators to bring about an agreed settlement between the Licensee and residents thereby necessitating an application for review from residents and other people in accordance with the ***"Fall back position"*** that formed part of the mediation process. In order that the Licensing Authority in accordance with its duty to promote the licensing objectives and its duty to ensure that the conditions of any licence are appropriate, clear and enforceable can then decide through the delegated powers given to its licensing committee the most appropriate course of action to take if any at a public hearing.

### Ground 3

The application seeks the same level of protection from crime and disorder/public nuisance that the people in the vicinity of the premises known as Harpur's Hotel and Restaurant enjoy from the conditions in place at these premises that are situated only a short distance away from the Alma Inn.

Section 1.7 of the statutory guidance refers;

*"It is a key mechanism for promoting best practice, ensuring consistent application of licensing powers across the country and for promoting fairness, equal treatment and proportionality."*

### Ground 4

Current condition;

*"Where CCTV is installed with recording facilities, such recordings shall be retained for a period of 30 Days and made available within a reasonable time upon request by Police".*

This condition is at variance with section 1.16 of the Statutory Guidance because it is:

- Imprecise and unenforceable.
- Inappropriate for the promotion of the licensing objectives.
- Not sufficiently prescriptive.

The condition is of no use if CCTV is not installed in the first place. Furthermore it lacks any specificity with regards to when the CCTV must be used and which areas of the premises it must cover. It is in short so vague as to be unenforceable.

In addition this condition is at variance with section 10.5 of the statutory guidance because it is copied directly from the operating schedule which the statutory guidance says is *"not acceptable"*. The statutory guidance also says: *"A condition should be interpreted in accordance with the applicant's intention"*.

This application seeks the removal of this condition and its replacement with the conditions agreed with the Derbyshire Licensing Police which arose from the mediation process. In order to satisfy the requirements of the statutory guidance at 1.16 and 10.5, promote the Licensing Objectives and lawfully protect people living and working in the vicinity of the premises.

## Ground 5

Current condition;

***"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"***

This condition is at variance with section 1.16 of the Statutory Guidance because it is:

- Inappropriate for the promotion of the licensing objectives
- Ambiguous and not clear in what it intends to achieve.
- Not sufficiently tailored to the individual type, location and characteristics of the premises.
- Not sufficiently prescriptive

There is substantive evidence that this condition has failed to promote the licensing objectives. Merely restricting the consumption of alcohol and other drinks to any external area provided for that purpose is insufficient. It is not the consumption of drinks that is the problem it is the people themselves and where those people are in relation to the premises that needs to be regulated, - so as to prevent crime and disorder/public nuisance.

This condition is also at variance with section 10.5 of the Statutory Guidance because it is copied directly from the operating schedule which the Statutory Guidance says is ***"not acceptable"***. The Statutory Guidance also says: ***"A condition should be interpreted in accordance with the applicant's intention"***.

This application seeks the removal of this condition and its replacement with appropriate condition/s that satisfy the requirements of the Statutory Guidance at 1.16 and 10.5, promote the Licensing Objectives and lawfully protect people living and working in the vicinity of the premises.



## Ground 6

Current condition:

*"Noise and vibration shall not emanate from the premises so as to cause a nuisance to nearby properties".*

This condition is at variance with section 1.16 of the Statutory Guidance because it is;

- Inappropriate for the promotion of the licensing objectives
- Imprecise and unenforceable
- Ambiguous and not clear in what it intends to achieve
- Duplicates other statutory provisions
- Replicates offences in other legislation
- Not sufficiently prescriptive.

The condition is copied directly from Government Guidance and is in effect the objective of other conditions, it is not itself a condition in any way.

Furthermore this condition is also at variance with section 10.5 of the Statutory Guidance because it is copied directly from the Operating Schedule which the Statutory Guidance says is *"not acceptable"*. The Statutory Guidance also says; *"A condition should be interpreted in accordance with the applicant's intention"*.

This application seeks the removal of this condition and its replacement with the condition agreed between residents and The Environmental Health dept of SDDC during the mediation process. In order to satisfy the requirements of the Statutory Guidance at 1.16 and 10.5, promote the licensing objectives and lawfully protect people living and working in the vicinity of the premises.

## Ground 7

Current condition:

*"The licensee shall ensure that no alcohol is consumed outside of the premises after the hours of 22:30 hrs".*

This condition is at variance with section 1.16 of the Statutory Guidance because it is;

- Inappropriate for the promotion of the licensing objectives
- Imprecise and unenforceable
- Ambiguous and unclear in what it intends to achieve
- Not sufficiently prescriptive.

The condition seeks to restrict the consumption of alcohol outside the premises so as to prevent crime and disorder/public nuisance, - there is however substantive evidence that it has failed. This is because it is anomalous to simply restrict the consumption of alcohol but allow the consumption of other drinks and any other activities such as smoking to take place unchecked and unsupervised in any and all areas external to the premises and at any time of day. The only exception to this being the use of the smoking shelter within the beer garden which was restricted by planning condition in December 2012 to use between 11:00 a.m and 10:00 p.m only, *"To protect the amenity of adjoining neighbours."*

This application seeks the removal of this condition and its replacement with appropriate condition/s that satisfy the requirements of the Statutory Guidance at 1.16, are consistent with existing planning restrictions, promote the Licensing Objectives and lawfully protect people living and working in the vicinity of the premises.

## Ground 8

Current condition:

*"A noise limiting device shall be installed, fitted and maintained by the Licensee in such manner as to control all sources of amplified music at the premises in order to ensure that music will be at a reasonable level at the nearest noise sensitive point as determined by the Environmental Health Department".*

This condition is at variance with section 1.16 of the Statutory Guidance because it is:

- Inappropriate for the promotion of the licensing objectives
- Imprecise and unenforceable
- Ambiguous and unclear in what it intends to achieve
- Duplicates other statutory requirements.
- Replicates offences in other legislation
- Not sufficiently prescriptive.

The condition lacks any specificity as to what is meant by "reasonable level" and "nearest noise sensitive point" it is in short vague, unenforceable and of no use.

In addition this condition is at variance with the courts in the case of *Developing Retail Limited v East Hampshire Magistrates Court* 2011.

In the above case the Deputy High Court Judge Miss Clare Montgomery states:

*"There was, however, clear evidence before the magistrates' court that would have justified the imposition of a condition protecting nearby residential properties from noise generated by licensable activities on the site. This could lawfully have been prevented by the imposition of a condition that specified the particular nearby locations (presumably residential premises) intended to be protected, and required that noise from the licensable activities did not exceed a specified level of decibels measured at a particular location over a particular period."*

This application seeks the removal of the above condition and its replacement with the condition agreed between residents and the Environmental Health Authority of SDDC during the mediation process. So as to satisfy the requirements of the statutory guidance at 1.16 and in recognition of the legal authority above created in the case of *Developing Retail Ltd v East Hampshire Magistrates Court* 2011. Thereby promoting the licensing objectives whilst lawfully protecting people in the vicinity of the premises.

## Ground 9

Current condition:

*"The licensee shall ensure that all windows and doors are kept closed for the duration of live and recorded music and other entertainment except for access to and egress from that room. This condition is subject to the licensee erecting signs in the premises informing customers of the necessity and reason for windows and doors to remain shut during such performances of live and recorded music and other entertainment".*

This condition is at variance with Section 1.16 of the statutory guidance because it is:

- Imprecise and unenforceable
- Ambiguous.
- Not tailored to the individual type, location and characteristics of the premises and events concerned.
- Insufficiently prescriptive.

The condition lacks any specificity with regard to what is meant by *"other entertainment"* and *"that room."* In addition the condition should not be *"subject to the erection of signs"* - the erection of signs should be an additional requirement.

This application seeks the removal of this condition and its replacement with the conditions agreed between residents and the Derbyshire Licensing Police during the mediation process. In order to satisfy the requirements of the statutory guidance at 1.16, promote the Licensing Objectives and lawfully protect people living and working in the vicinity of the premises.

## Ground 10

The legal authority established in the case of *Crawley Borough Council v Attenborough* (2006)

Lord Justice Scott Baker;

*"It is important that the terms of a premises licence and any conditions attached to it should be clear not just clear to those having specialist knowledge of licensing; such as the Local Authority or the manager of the premises, but also to the independent bystander such as neighbours, who may have no knowledge of licensing at all.*

*The terms of a licence and its conditions may of course be subject of enforcement. Breach carries criminal sanctions. Everyone must know where they stand from the terms of the document. It must be apparent from reading the document what the license and its conditions mean."*

The conditions at ground 4, 5, 6, 7, 8 and 9 do not satisfy the above, because they are either unclear in what they intend to achieve, unenforceable, at variance with sections 10.5 and 1.16 of the Section 182 Statutory Guidance to the Act or a combination of these factors. These conditions have failed to promote the Licensing Objectives and without alteration they will continue to fail in this way whilst also failing to lawfully protect residents and other people in the vicinity of these premises.

## SUMMARY:

This application for review seeks nothing more than clarity with regards to the conditions of the Licence and parity with adjacent Licensed Premises in order to promote the Licensing Objectives and lawfully protect those people living and working in the vicinity of the Alma Inn. This would not seem unreasonable.

The application arises out of the failure of the mediation process conducted by the Derbyshire Licensing Police to bring about a negotiated settlement between the Licensee and residents/other People.

*It is nonetheless stressed that whilst it has become necessary to apply for a formal review, if there remains an opportunity to reach a negotiated agreement outside of the need for a hearing before a Licensing Committee, then residents/other people are more than happy to explore any such opportunity as previously.*

However it should be noted that this application is made after the following key concerned residents and other people have worked in partnership with and co-operated with all authorities over a considerable length of time in the pursuit of common goals and a preferred negotiated settlement without success.

The following key concerned residents and other people who have been involved in the mediation process endorse and support this application:

NAME	ADDRESS	SIGNATURE	DATE
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

22.

Items redacted by Mr  
Horizon upon submission

ENOR LICENSING 5591681



South Derbyshire  
District Council

26 JUL 2013

Corporate Services

**SOUTH DERBYSHIRE DISTRICT COUNCIL**  
**Licensing Act 2003**

**Representation by an Interested Party**

**Note:** Please be aware that this form may be viewed by the Applicant or by a representative of the Applicant. It may also be read out in public at the sub-committee hearing.

An interested party can make representations against a relevant licence application. Representations may be made on behalf of the above by a representative e.g. MP, solicitor, or a friend.

Please indicate in which capacity you are making this representation by ticking a box below:

- An individual person
- A body representing a person e.g. Solicitor
- A person involved in a business
- A body representing a business

<input checked="checked" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

Representations are only relevant to an application if they relate to at least one of the four **Licensing Objectives** listed below:

1. **The Prevention of Crime and Disorder**
2. **Public Safety**
3. **Prevention of Public Nuisance**
4. **The Protection of Children from Harm**

Representations may be made at any time during a period of 28 consecutive days starting on the day after the application was given to the Licensing Authority.

In the case of a closure order issued by the Police, representations may be made during the seven days that follow relevant notice being given to the Local Authority by the Magistrates Court, starting on the day after the day the notice was received.

South Derbyshire  
District Council

26 JUL 2013

Corporate Services

Please enter your contact details below: -

Name:	STEPHAN SPAIN
Address:	1 SOUTH STREET MELBOURNE DERBY
Postcode:	DE73 8GB
Tel:	
E-mail:	

Please confirm name and address of person, represented person or business affected, if different from the address given above: i.e. this could be a shop premise in the vicinity but you do not live at the shop premises.

Name:	
Address:	
Postcode:	

Address of premises in application causing concern, which you wish to make a representation about

Name of Applicant:	ALMA INN
Address of Premises	DERBY ROAD MELBOURNE
Application Details:	REVIEW OF LICENSING

Please give details of your representation in the box below. Indicate which of the Licensing Objectives your representation refers to by ticking the relevant box/es:

- The Prevention of Crime and Disorder
- Public Safety
- Prevention of Public Nuisance
- The Protection of Children from Harm

<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>

Details of representation.....



My concerns are in regard to the outside drinking area.

The Alma is surrounded by residential properties and the siting of the outside drinking area has never been considered. Neither has the appropriate protections for adjacent residential properties.

The Alma is not a 'family' pub and the noise and in particular the language from people drinking outside is a public nuisance to residents.

Also the proposed (current) drinking area is remote from the bar making it difficult to spot arguments in the making.

If possible please suggest alterations to the application that would resolve the problem mentioned above, again paying attention to the licensing objectives

I request that agreed modern protective measures be a condition of the licence.

Appropriate protective measures should be recommended by Environmental Health and should include acoustic protection.

I understand that 3 metre walls are now expected for drinking areas adjacent to residential properties.

Other measures may include sound absorbing materials and extensions to the wall to contain the sound.

The second issue of the siting of the drinking area needs consideration would it be more appropriate to site it adjacent to the bar area.

I would like to make representations at the hearing.

Once the Licensing Section has received this form you will receive a written acknowledgement and you may be contacted to discuss the issue prior to any referral to a sub-committee hearing.

If referred to a sub committee hearing:

Please tick this box if you do not intend to be present

☐

Please tick this box if you do not intend to be represented

☐

If you wish to withdraw your representation you may do so by confirming this in writing before the end of the last day of the 28 day consultation period.

Signed: .....

PRINT NAME: .....

STEPHEN SPENCER

Date: .....

25<sup>th</sup> July 2013

Please return this form to the following address:

South Derbyshire District Council  
PO Box 6927  
Civic Offices  
SWADLINCOTE  
DE11 0AH





South Derbyshire  
District Council

31 JUL 2013

Corporate Services

**SOUTH DERBYSHIRE DISTRICT COUNCIL**  
**Licensing Act 2003**

**Representation by an Interested Party**

**Note:** Please be aware that this form may be viewed by the Applicant or by a representative of the Applicant. It may also be read out in public at the sub-committee hearing.

An interested party can make representations against a relevant licence application. Representations may be made on behalf of the above by a representative e.g. MP, solicitor, or a friend.

Please indicate in which capacity you are making this representation by ticking a box below:

- An individual person
- A body representing a person e.g. Solicitor
- A person involved in a business
- A body representing a business

<input checked="checked" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

Representations are only relevant to an application if they relate to at least one of the four **Licensing Objectives** listed below:

- 1. The Prevention of Crime and Disorder**
- 2. Public Safety**
- 3. Prevention of Public Nuisance**
- 4. The Protection of Children from Harm**

Representations may be made at any time during a period of 28 consecutive days starting on the day after the application was given to the Licensing Authority.

In the case of a closure order issued by the Police, representations may be made during the seven days that follow relevant notice being given to the Local Authority by the Magistrates Court, starting on the day after the day the notice was received.

Please enter your contact details below: -

Name:	COUNCILLOR JIM HEWLETT COUNCILLOR JOHN HARRISON →	
Address:	16 THE LILYPOLY, MELBOURNE, DERBY	55 PENN LANE, MELBOURNE DERBY DE73 8EQ
Postcode:	DE73 8GL	DE73 8EQ
Tel:	0... .. / 0... ..	
E-mail:	jim.hewlett@south-debp.gov.uk / John.harrison@south-debp.gov.uk	

Please confirm name and address of person, represented person or business affected, if different from the address given above: i.e. this could be a shop premise in the vicinity but you do not live at the shop premises.

Name:	VARIOUS
Address:	34, 36, 38, 40, 42, 44, 46, 48, 52, 62A, B and C 63, 65 1, 2 and 3 SOUTH STREET DERBY ROAD
Postcode:	

Address of premises in application causing concern, which you wish to make a representation about

Name of Applicant:	MARSTONS PLC
Address of Premises	THE ALMA INN, DERBY ROAD, MELBOURNE, DERBY DE73 8FE
Application Details:	

Please give details of your representation in the box below. Indicate which of the Licensing Objectives your representation refers to by ticking the relevant box/es:

- The Prevention of Crime and Disorder
- Public Safety
- Prevention of Public Nuisance
- The Protection of Children from Harm

<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>

Details of representation.....

In the light of numerous and varied problems experienced with The Alma Inn over several years the Council needs to have licensing conditions which are easily understood, clear, precise, enforceable and unambiguous.

The existing conditions are none of these, one example being that different officers of the Council have at different times given different interpretations of where consumption of alcoholic drinks can take place; an Environmental Health officer said that it included the car parking area and a Licensing Officer (retired now) said that it did not.

We fully support the application for a review on all grounds stated by Mr Roger Harrison, with which we completely agree.

**In summary:**

- 1) A review was the "fall back position" agreed in July 2012 in the event of the failure of the mediation process managed by the Derbyshire Police, and I understand that it has failed.
- 2) The existing conditions have proved to be ineffective, vague and do not facilitate achievement of the licensing objectives.
- 3) Harpur's , licensed premises further along Derby Road, has a much clearer set of conditions (perhaps because they are more recent), even though they are in a more central, commercial and less residential area of the village.
- 4) It is absurd that such a difference should exist between two premises only a few hundred metres away from each other.
- 5) The noise conditions are inadequate for premises in an overwhelmingly residential area, as well as being imprecise, unenforceable, and not in accordance with current legislation, as cited by Mr R. Harrison.

AS ATTACHED

If possible please suggest alterations to the application that would resolve the problem mentioned above, again paying attention to the licensing objectives

Licensing Section,  
Civic Offices, Civic Way, Swadlincote Derbyshire DE11 0AH  
01283 221000



Once the Licensing Section has received this form you will receive a written acknowledgement and you may be contacted to discuss the issue prior to any referral to a sub-committee hearing.

Licensing Section,  
Civic Offices, Civic Way, Swadlincote Derbyshire DE11 0AH  
01283 221000

If referred to a sub committee hearing:

Please tick this box if you do not intend to be present

☐

Please tick this box if you do not intend to be represented

☐

If you wish to withdraw your representation you may do so by confirming this in writing before the end of the last day of the 28 day consultation period.

Signed:

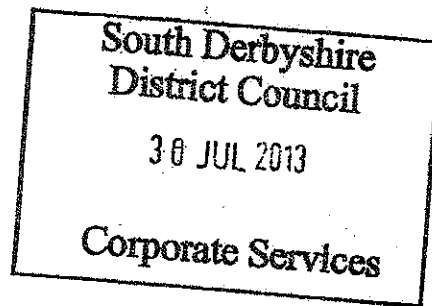
*pp John Harrison*  
PRINT NAME: JIM HEWLETT

Date:

30-7-2013

Please return this form to the following address:

South Derbyshire District Council  
PO Box 6927  
Civic Offices  
SWADLINCOTE  
DE11 0AH



**SOUTH DERBYSHIRE DISTRICT COUNCIL**  
**Licensing Act 2003**

**Representation by an Interested Party**

**Note:** Please be aware that this form may be viewed by the Applicant or by a representative of the Applicant. It may also be read out in public at the sub-committee hearing.

An interested party can make representations against a relevant licence application. Representations may be made on behalf of the above by a representative e.g. MP, solicitor, or a friend.

Please indicate in which capacity you are making this representation by ticking a box below:

- An individual person
- A body representing a person e.g. Solicitor
- A person involved in a business
- A body representing a business

<input type="checkbox"/>
<input type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>

Representations are only relevant to an application if they relate to at least one of the four **Licensing Objectives** listed below:

- 1. The Prevention of Crime and Disorder**
- 2. Public Safety**
- 3. Prevention of Public Nuisance**
- 4. The Protection of Children from Harm**

Representations may be made at any time during a period of 28 consecutive days starting on the day after the application was given to the Licensing Authority.

In the case of a closure order issued by the Police, representations may be made during the seven days that follow relevant notice being given to the Local Authority by the Magistrates Court, starting on the day after the day the notice was received.

Please enter your contact details below: -

Name:	COTTAGE ANTIQUES.
Address:	34 DERBY ROAD, MELBOURNE, DERBYS.
Postcode:	DE73 8HE
Tel:	
E-mail:	

Please confirm name and address of person, represented person or business affected, if different from the address given above: i.e. this could be a shop premise in the vicinity but you do not live at the shop premises.

Name:	
Address:	
Postcode:	

Address of premises ~~in application causing concern~~ which you wish to make a representation about

Name of Applicant:	ROGER HARRISON.
Address of Premises	THE ALMA INN, DERBY ROAD, MELBOURNE
Application Details:	REVIEW OF PREMISES LICENCE

Please give details of your representation in the box below. Indicate which of the Licensing Objectives your representation refers to by ticking the relevant boxes:

- The Prevention of Crime and Disorder
- Public Safety
- Prevention of Public Nuisance
- The Protection of Children from Harm

<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>

Details of representation.....

**For the Attention of the Licensing Committee:**

In relation to the Business Premises at 34 Derby Road, Melbourne and the people that work there it is respectfully requested that the Licensing Committee provide the same level of protection to them, by way of conditions, that the businesses and the people that work in the vicinity of Harpur's Hotel and Restaurant enjoy from the conditions in place at these premises only a short distance away. The licence for Harpur's and its associated non mandatory conditions are attached for the attention of the Licensing Committee.

These non mandatory conditions having arisen from discussions with the relevant responsible authorities in order to promote the Licensing Objectives of the Licensing Act.

In addition it is also respectfully requested that the current conditions of the Licence at the Alma Inn are reworded in such a manner as to make them clear and enforceable in accordance with section 1.16 of the Statutory Guidance to the Licensing Act, and in recognition of existing legal authority relating to the wording and drafting of conditions by Licensing Authorities as described by Patterson's Licensing Acts.

In the event that the Licensing Committee does not feel it is appropriate to similarly promote the Licensing Objectives and exercise its powers in a consistent, fair and proportionate way through the provision of the same level of protection to businesses in the vicinity of the Alma Inn when compared to businesses a short distance away in the vicinity of Harpur's Hotel and Restaurant. Please would the Licensing Committee provide to all parties full comprehensive written reasons for this decision that address the extent to which this decision has been made with regard to the licensing authority's statement of licensing policy and the section 182 statutory guidance. In recognition of section 12.10 of the Statutory Guidance, Hope and Glory v Westminster Council 2011 and Little France Ltd v Ealing Borough Council 2013.

Once the Licensing Section has received this form you will receive a written acknowledgement and you may be contacted to discuss the issue prior to any referral to a sub-committee hearing.

If referred to a sub committee hearing:

Please tick this box if you do not intend to be present

☐

Please tick this box if you do not intend to be represented

☐

If you wish to withdraw your representation you may do so by confirming this in writing before the end of the last day of the 28 day consultation period.

Signed: .....

PRINT NAME: .....

Date: .....

Please return this form to the following address:

South Derbyshire District Council  
PO Box 6927  
Civic Offices  
SWADLINCOTE  
DE11 0AH

COPY

South Derbyshire  
District Council

30 JUL 2013

## Part A

## Premise Licence under Licensing Act 2003

Premise Licence Number **SDDC / 015535**

## Part 1 – Premise Details

Postal Address of premises, or if none Ordnance Survey map reference of description **Harpur's of Melbourne, 2 Derby Road, Melbourne, Derbyshire, DE73 8FE**

Telephone Number **01332 862134**

Where the Licence is time limited the dates **Not Applicable**

Licensable Activities authorised by the licence

**Provision of regulated entertainment for (e) live music, (f) recorded music and (g) performances of dance.**

**Provision of entertainment facilities for (i) Making Music, (j) Dancing and (k) Entertainment of a similar description to that falling within (i) and (j).**

**Provision of late night refreshment. Supply of alcohol.**

The times the licence authorises the carrying out of licensable activities

**Live Music – Indoors**

**Friday & Saturday – 17.00hrs until Midnight**

**Sunday – 17.00hrs until 23.00hrs**

**Recorded Music & Performances of Dance - Indoors**

**Monday to Sunday – 11.00hrs until Midnight**

**Anything of a similar description to that falling within (e), (f) or (g)**

**Monday to Saturday – 11.00hrs until Midnight**

**Sunday – 11.00hrs – 23.00hrs**

**Provision of Entertainment Facilities for: Making Music, Dancing &**

**Entertainment of a similar description to that falling within (i) & (j) - Indoors**

**Monday to Saturday – 11.00hrs until Midnight**

**Sunday – 11.00hrs – 23.00hrs**

**Provision of Late Night Refreshment – Indoors**

**Monday to Saturday – 23.00hrs until Midnight**

**Supply of Alcohol – (Indoors) and to include first floor restaurant outside terraced area**

**Monday to Saturday – 11.00hrs until Midnight**

**Sunday – 11.00hrs – 23.00hrs**

**Russell Yard (Outdoors) Consumption of alcohol only**

**Monday to Sunday – 11.00hrs until 23.00hrs**

**Seasonal Variation**

**On Christmas Eve until 01.00hrs and New Years Eve until 02.00hrs for the following licensable activities is permitted: Live Music, Recorded Music, Performances of Dance, Making Music, Dancing, Late Night Refreshment & Supply of Alcohol**

The opening hours of the premises

**Monday to Saturday – 08.00hrs – 00.30hrs**

**Sunday – 08.00hrs – 23.30hrs**

**Seasonal Variation**

**Christmas Eve until 01.30hrs and New Years Eve until 02.30hrs**

Where the licence authorises supplies of alcohol whether there are on and or off supplies **On and off sales**

## **Annex 2 - Conditions consistent with Operating Schedule**

### **General**

Training will be given to all staff members so that they are aware of all aspects of the law in relation to serving alcohol, including challenge 25, customer behaviour problems, zero drugs tolerance & health & safety issues including fire safety. All training will be the responsibility of the Designated Premise Supervisor.

### **Crime & Disorder**

1. Relevant signage for drinks purchase and consumption areas
2. Provide adequate staffing to ensure all areas of the licensed premises, e.g. toilets and not easily visible areas of the bar, are regularly checked to prevent possible breach of licensing principles.
3. The Designated Premises Supervisor (DPS) shall ensure that a written incident log is maintained within the premises and details of all incidents are recorded within the log. This log shall be kept on the premises for a period of not less than 12 months and shall be produced upon request of a Police Officer or an authorised person as detailed within Section 13 of the Licensing Act 2003.
4. Suitable and sufficient written risk assessments and operating policies shall be kept up to date and shall be made available for inspection upon request of a Police Officer or an authorised person as detailed within Section 13 of the Licensing Act 2003.
5. The DPS shall ensure that clear, prominent and legible notices must be displayed internally at all exits, requesting customers and other users to leave the premises and the area local to the premises quietly and in an orderly manner respecting the needs of local residents
6. The DPS or nominated representative shall be a member of the local Pub Watch Scheme where such a scheme exists.
7. A CCTV system shall be installed at all times and the recording system must be maintained in good working order and any faults repaired as soon as possible. (It is recommended that all maintenance paperwork be kept to show that the retailer has shown all due diligence in maintaining the system).
8. The CCTV recording system must be operating at all times when the premises are open for licensable activities.
9. All CCTV recordings must be retained for a minimum of 28 days unless negotiated otherwise. These images must be available for viewing at any reasonable time upon request of a Police Officer or an authorised person as detailed within Section 13 of the Licensing Act 2003.
10. The premises holder, DPS and designated members of staff must be able to retrieve and copy any recording/images at the time of asking or within 48 hours if so required. (The police will not meet the cost for a recording or materials used for a reproduction of the image in respect of any crime and disorder; all costs are to be met by the owner of the system. If the incident was unrelated to the premises, the retrieval, if a cost incurred, would be met between the agencies requiring the image).



11. The CCTV recording unit is to be kept secure, to be opened only by the premises licence holder or authorised, designated member of staff.
12. Installed CCTV cameras/monitors are to be positioned so as to ensure all areas to which the public have access are covered, this is to include all areas designated for the consumption of alcohol. A plan denoting the site of each camera shall be deposited with Derbyshire Police upon completion of the installation of any such cameras or monitors.
13. All cameras installed will be of a standard that will offer optimum image quality in low light.
14. All digital recordings to be made in real time, time lapse not to be used; the recordings will be fit for the purpose.
15. All Regulated Entertainment to be indoor only.
16. No customer shall be allowed to remove any alcoholic or other drink from the licensed area of the premises in an open container (e.g. glasses and open bottles) unless to an external area set aside for consumption as indicated on a plan submitted with the application.
17. No children under 16 years are to be allowed on the premises after 21:00 hours

#### **Public Safety**

1. Relevant and up to date, electrical safety certificate, building integrity, gas certificate and comply with Health and Safety regulations
2. Adhere to the recommended premises capacity
3. Provide door supervision when required
4. Provide exterior lighting
5. Illuminated fire exit installed
6. Downstairs area to be fully compliant with Fire Safety Regulations

#### **Public Nuisance**

1. Train staff to check outside areas at regular intervals and again at close of business
2. Provide signage asking customers to respect your neighbours and leave the premises quietly
3. Install a noise limiter for the provision of live and recorded music (sound level to be set by Environment Health) during which doors and windows will be kept closed except for access and egress.
4. All external doors and windows to remain closed at all times when regulated entertainment is being offered at the premises save for access and egress.
5. No noise from regulated entertainment, including repetitive bass noise, shall be audible within noise-sensitive premises with their windows open in a typical manner for ventilation
6. Russell Yard to be managed with a controlled designated area
7. Russell Yard is to be a designated area for consumption only and will be clearly marked on a plan attached to the licence
8. When in use the Russell Yard area will be screened off sufficiently in a way as to show a defined area for the use of consumption and smoking. At no time will consumption or smoking be allowed in any other area of Russell Yard

9. There will be no consumption allowed in Russell Yard after 23.00hrs daily

**Protection of Children from Harm**

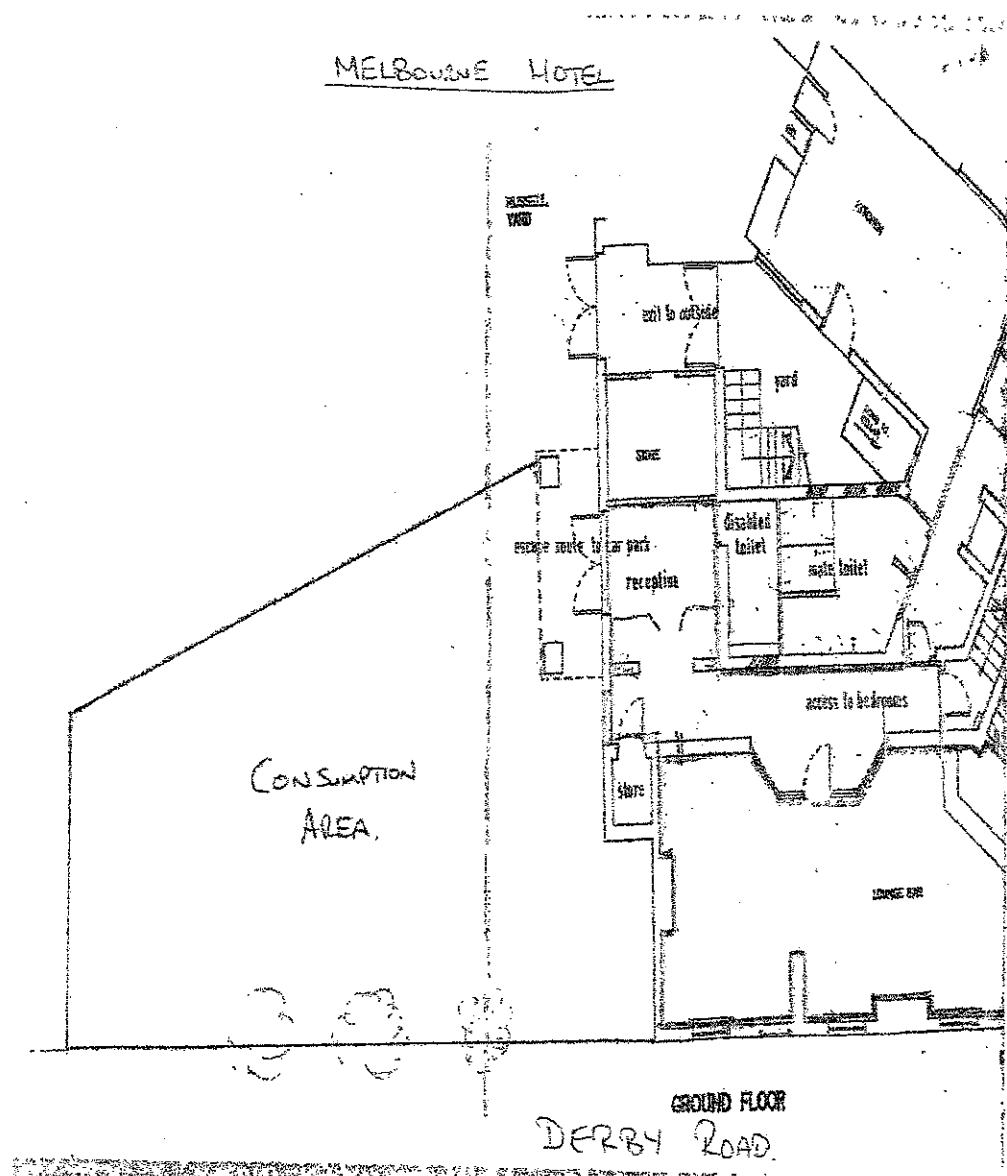
1. Ensure minors are accompanied by an adult and supervised at all times
2. Full training shall be provided to all staff on commencement of employment relating to all age-restricted products sold and any system or procedures they are expected to follow in the course of dealing with these goods.
3. Refresher training shall be provided at regular intervals – at least every 12 months.
4. Records detailing the training provided shall be kept on the premises for production upon request of a Police Officer or another authorised person acting on behalf of a responsible authority as detailed within Section 13 Of the Licensing Act 2003.
5. All records must be written and shall be retained on the premise for a minimum of 12 months.
6. A challenge 25 Proof of age scheme shall be operated at all times.
7. Anyone attempting to purchase alcohol (or other age restricted product) that appears under the age of 25 years shall be asked to produce a proof of age.
8. The only acceptable forms of identification shall be:
  - PASS – accreditation proof of age card.
  - Photo Driving Licence.
  - Current British/UK Passport.
9. Clear, prominent and unobstructed signage informing customers of the proof of age scheme in operation, along with the age restrictions on products shall be displayed at:
  - All entry points to the premise.
  - Points of sale
10. A system of recording sales refused under the proof of age scheme shall be operated at all times.
11. The refusal book/log shall be kept on the premises for production upon request of a Police Officer or an authorised person as detailed within Section 13 Of the Licensing Act 2003.
12. The records relating to the refusal book/log shall be retained on the premises for a minimum of 12 months.
13. No adult entertainment or services, activities etc will be undertaken at the premises.
14. Mini bars are kept locked restricting access to non-authorised persons. Keys to the mini bar will only be issued to bona fide residents staying in the hotel who have been checked for I.D.
15. At no time should a key to a mini bar be issued to any person under 18 years of age.

**Annex 3 - Conditions attached after a hearing by the licensing authority**

None

42.

## Annex 4 – Plans 1 (Russell Yard)



South Derbyshire  
District Council

30 JUL 2013

Corporate Services

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South Derbyshire  
District Council

23 JUL 2013

Corporate Services

**SOUTH DERBYSHIRE DISTRICT COUNCIL**  
**Licensing Act 2003**

**Representation by an Interested Party**

**Note:** Please be aware that this form may be viewed by the Applicant or by a representative of the Applicant. It may also be read out in public at the sub-committee hearing.

An interested party can make representations against a relevant licence application. Representations may be made on behalf of the above by a representative e.g. MP, solicitor, or a friend.

Please indicate in which capacity you are making this representation by ticking a box below:

- An individual person
- A body representing a person e.g. Solicitor
- A person involved in a business
- A body representing a business

<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>

Representations are only relevant to an application if they relate to at least one of the four **Licensing Objectives** listed below:

- 1. The Prevention of Crime and Disorder**
- 2. Public Safety**
- 3. Prevention of Public Nuisance**
- 4. The Protection of Children from Harm**

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In the case of a closure order issued by the Police, representations may be made during the seven days that follow relevant notice being given to the Local Authority by the Magistrates Court, starting on the day after the day the notice was received.

Please enter your contact details below: -

Name:	
Address:	
Postcode:	DE74 2SU
Tel:	
E-mail:	

Please confirm name and address of person, represented person or business affected, if different from the address given above: i.e. this could be a shop premise in the vicinity but you do not live at the shop premises.

Name:	COTTAGE ANTIQUES
Address:	34 DERBY ROAD MELBOURNE
Postcode:	DE73 8FE

Address of premises in application causing concern, which you wish to make a representation about

Name of Applicant:	<del>XXXX</del> ROGER HARRISON
Address of Premises	THE ALMA INN DERBY ROAD MELBOURNE
Application Details:	REVIEW OF PREMISES LICENCE

Please give details of your representation in the box below. Indicate which of the Licensing Objectives your representation refers to by ticking the relevant box/es:

- The Prevention of Crime and Disorder
- Public Safety
- Prevention of Public Nuisance
- The Protection of Children from Harm

<input type="checkbox"/>
<input type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>

Details of representation.....

PLEASE SEE ATTACHED SHEETS

1-4

Once the Licensing Section has received this form you will receive a written acknowledgement and you may be contacted to discuss the issue prior to any referral to a sub-committee hearing.

Licensing Section,  
Civic Offices, Civic Way, Swadlincote Derbyshire DE11 0AH  
01283 221000

47.

PLEASE SEE ATTACHED SHEETS

1-4

If possible please suggest alterations to the application that would resolve the problem mentioned above, again paying attention to the licensing objectives

Licensing Section,  
Civic Offices, Civic Way, Swadlincote Derbyshire DE11 0AH  
01283 221000

48.



If referred to a sub committee hearing:

Please tick this box if you do not intend to be present

☒

Please tick this box if you do not intend to be represented

☐

If you wish to withdraw your representation you may do so by confirming this in writing before the end of the last day of the 28 day consultation period.

Signed: .....

PRINT NAME: .....

Date: ..... 22/07/2013 .....

Please return this form to the following address:

South Derbyshire District Council  
PO Box 6927  
Civic Offices  
SWADLINCOTE  
DE11 0AH

In addition to my endorsement of and my support for the application to review the licence through the petition supplied and signed by me that accompanies the application. I wish to make the following representation of my own by way of supplying the following evidence to the Licensing Committee with regard to the permitted levels of noise from licensed premises.

The attached letter to my MP from the Minister responsible for noise nuisance with regard to what level of noise is permitted from licensed premises is self explanatory and the major points are highlighted.

In the case of Hope and Glory v Westminster Magistrates Court 2010 the definition of what constitutes a public nuisance that is contained in the section 182 guidance and referred to in the attached letter was challenged in the courts. The challenge stated that a low level of nuisance affecting a few people locally did not constitute a public nuisance and that this was in fact a private nuisance and that the section 182 guidance was unlawful. The courts response was that the guidance was not and 'is not unlawful.' The statutory guidance therefore remains unchanged.

Furthermore the government guidance to Police Forces who have the power to close licensed premises emitting a noise nuisance reflects the above saying:

**'The 2003 Act anticipates that any noise from premises should be disturbing members of the public, for example in the street or residing locally – otherwise it could not constitute a nuisance.'**

The concept of attaching conditions to Licences stipulating that noise from licensed premises should be inaudible at the nearest noise sensitive point is a long established one. This was reflected in the previous Statutory Guidance to Licensing Authorities and the Public. Moreover existing conditions attached to licenses the length and breadth of the land exhibit this permitted level of noise. It is however now insufficient to just state inaudible as this has been the subject of challenge in the courts and conditions must amongst other things now specify an objective permitted level of noise expressed in decibels in order to be enforceable. This is because it is a criminal offence to breach the conditions of a licence and a subjective assessment of whether noise is audible or not is quite simply not good enough and insufficient evidence with which to contemplate a prosecution. The need for an objective measurable permitted level of noise is illustrated by the Noise Act and the rules of evidence required by the courts.

Conditions ruled unenforceable and therefore unlawful by the courts include;

- **Music will not be audible above background level at the nearest noise sensitive point.**
- **Noise should not be audible at the boundaries of noise sensitive properties.**
- **All noise from regulated entertainment at the premises should be inaudible 1 metre outside any noise sensitive location.**

So.!

Section 1.16 of the Statutory Guidance to the Licensing Act states amongst other things that conditions must be 'clear and enforceable.'

With the above in mind and with regard to the conditions of the licence at The Alma Inn may I respectfully request that the Licensing Committee are mindful of the above evidence in relation to the necessary changes that are required to the wording of the noise conditions so as to make them clear and enforceable.

Name

Signed

Date

22/07/2013

SI. 21

Andrew Bridgen MP

14 SEP 2011

RECEIVED

Nobel House  
17 Smith Square  
London SW1P 3JR

Telephone 08459 335577  
Email [helpline@defra.gsi.gov.uk](mailto:helpline@defra.gsi.gov.uk)  
Website [www.defra.gov.uk](http://www.defra.gov.uk)

**defra**

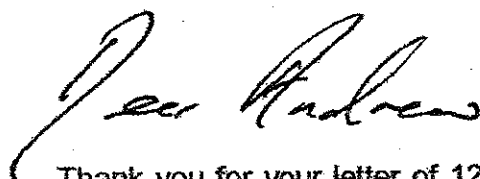
Department for Environment  
Food and Rural Affairs

Andrew Bridgen MP  
House of Commons  
London  
SW1A 0AA

Our ref: MC245506/GM

10<sup>th</sup> September 2011

From Lord Henley  
Parliamentary Under Secretary



Thank you for your letter of 12 August to Bob Neill on behalf of your constituent, Ms Peta Warrington of 14 Haulton Drive, Castle Donington, Derby, about the Licensing Act 2003 and noise nuisance. I am replying as the Minister responsible for policy on noise nuisance.

Under the Licensing Act, the administration of licensing is devolved to local authorities acting as licensing authorities (LAs). However, LAs do not have an unfettered right to interpret 'public nuisance' for the purposes of the Act. The Home Secretary has issued guidance to LAs under section 182 of the Act on the discharge of their licensing functions, which LAs must have regard to. In addition, each LA must consult on, determine and publish its licensing policy before carrying out its functions under the Act, and must have regard to this policy.

The guidance under section 182 says: "Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of interested parties (as defined in the 2003 Act) in the vicinity of licensed premises."

Therefore, LAs are subject to the existing common law in the interpretation of 'public nuisance', and their interpretations have come before the courts; for example, in litigation flowing from the appeals process under the Act.

31

52.

Under the Environmental Protection Act 1990, local authorities have a duty to take reasonably practicable steps to investigate complaints of 'noise emitted from premises so as to be prejudicial to health or a nuisance'. Environmental Health Officers are responsible for carrying out investigations into potential cases of statutory nuisance using their professional judgement in order to ascertain if a nuisance is occurring. If satisfied that a statutory nuisance exists, or is about to occur or recur, the local authority must serve an abatement notice requiring that the nuisance is abated or restricted.

The Noise Act 1996 (as amended) gives local authorities additional powers to deal with noise nuisance from licensed premises between the hours of 23:00 and 07:00.

If your constituent has reported an incident of noise nuisance to her local authority and is dissatisfied with its response, she should direct any complaint through the authority's own formal complaints procedure. If she remains dissatisfied thereafter, she may wish to contact the independent Local Government Ombudsman for advice and assistance.

A handwritten signature in dark ink, appearing to read 'Henley', written in a cursive style.

LORD HENLEY

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## THE APPLICATION

This application is made in accordance with section 11.1 of the Section 182 guidance:

*"The proceedings set out in the 2003 Act for reviewing premises licenses and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate".*

It is also made in accordance with the *"Fall back Position"* agreed between residents/other people and the Derbyshire Licensing Police as documented in the email at A1 (1 Of 2) to PC Richard Morley 2766. July 15<sup>th</sup> 2012:

*"Should no agreement be reached through your actions as mediator between the Licensee and residents/other persons then the already proposed and agreed meeting would be the course of action in the first instance, and in the absence of any agreement arising from this an application to review the licence would be made in any event."*

This application is made in the absence of any agreed settlement arising from the documented mediation process (A1 – A4) designed to negate the need for an application to be made in the first instance.

## GROUND FOR REVIEW

The attached grounds for review are made in accordance with section 51 subsection (4) (a) of the Licensing Act and section 11 subsection 11.2 of the section 182 Statutory Guidance.

In accordance with section 51 subsection (4) (a) the attached grounds are *"relevant to one or more of the Licensing Objectives."*

The application is also made in accordance with section 11.2 of the statutory guidance:

*"At any stage, following the grant of a premises licence or club premises certificate, a responsible authority or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives".*

SS .

1/

## Ground 1:

The repeated and consistent breaches of the conditions of the licence, crime and disorder, disturbance and public nuisance since the previous review/appeal in February 2008. Culminating in complaints of crime and disorder/nuisance and disturbance in January/February 2012, the notification by residents/other people of their intention to seek a review in February 2012 to the Licensing Police and the Licensing Authority and the subsequent major incident in March 2012 (Police incident No 832 of the 10<sup>th</sup> March 2012) when further breaches of the conditions of the licence and other offences lead to the setting alight of Alec Judge resident of Melbourne and the assault of another patron on the premises, necessitating the attendance of The Police and Ambulance service coupled with further complaints to the licensing authority. This incident gives rise to the introduction of a temporary action plan (still in place) at A5 introduced by the Police imposing further sanctions on the premises inclusive of the strict smoking and drinking requirements for all external areas so as to avoid any further recurrence of previous problems and a commitment to residents from the Licensee through Peter Barrow Licensing Officer not to hold any further live entertainment events.

This ground is supported by extensive video evidence (not intended to be exhaustive) and letters and emails of complaint as attached at A6. To be produced/expanded upon and presented to the licensing committee at any necessary hearing.

The licensing Authorities own records should include a number of both verbal and written formal cautions in this time relative to multiple offences coupled with the Police also having cautioned and spoken to the Licensee/Premises supervisor in February 2012 and the resulting actions following the incident with Alec Judge in March 2012 and previous complaints up to and including April 2013.

## Ground 2:

The ultimate failure in May 2013 of the Police intervention as mediators to bring about an agreed settlement between the Licensee and residents thereby necessitating an application for review from residents and other people in accordance with the *"Fall back position"* at A1 page 1 of 2. In order that the Licensing Authority in accordance with its duty to promote the licensing objectives and its duty to ensure that the conditions of any licence are appropriate, clear and enforceable can then decide through the delegated powers given to its licensing committee the most appropriate course of action to take if any at a public hearing.



### Ground 3

The application seeks the same level of protection from crime and disorder/public nuisance that the people in the vicinity of the premises known as Harpur's Hotel and Restaurant enjoy from the conditions in place at these premises that are situated only a short distance away from the Alma Inn.

Section 1.7 of the statutory guidance refers;

***"It is a key mechanism for promoting best practice, ensuring consistent application of licensing powers across the country and for promoting fairness, equal treatment and proportionality."***

Harpur's Hotel and Restaurant licence and none mandatory conditions are attached at A7 for reference. Nb: These conditions are neither proposed nor imposed conditions, they have arisen from discussions with each relevant responsible authority in accordance with section 9.28 of the Statutory Guidance.

### Ground 4

Current condition;

***"Where CCTV is installed with recording facilities, such recordings shall be retained for a period of 30 Days and made available within a reasonable time upon request by Police"***.

This condition is at variance with section 1.16 of the Statutory Guidance at A8 because it is:

- Imprecise and unenforceable.
- Inappropriate for the promotion of the licensing objectives.
- Not sufficiently prescriptive.

The condition is of no use if CCTV is not installed in the first place. Furthermore it lacks any specificity with regards to when the CCTV must be used and which areas of the premises it must cover and other essential matters. It is in short so vague as to be unenforceable.

In addition this condition is at variance with section 10.5 of the statutory guidance at A9 because it is copied directly from the operating schedule at A12 which the statutory guidance says is ***"not acceptable"***. The statutory guidance also says: ***"A condition should be interpreted in accordance with the applicant's intention"***.

This application seeks the removal of this condition and its replacement with the conditions agreed with the Derbyshire Licensing Police at A10 (1/.) page 2 of 8 which arose from the mediation process at A1 – A4 and mirror those conditions already in place at Harpur's Hotel and Restaurant a short distance away. Thereby satisfying the requirements of the statutory guidance at A8/A9, promoting the Licensing Objectives and lawfully protecting people living and working in the vicinity of the premises.

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## Ground 5

Current condition;

***“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”***

This condition is at variance with section 1.16 of the Statutory Guidance at A8 because it is:

- Inappropriate for the promotion of the licensing objectives
- Ambiguous and not clear in what it intends to achieve.
- Not sufficiently tailored to the individual type, location and characteristics of the premises.
- Not sufficiently prescriptive

There is substantive evidence that this condition has failed to promote the licensing objectives. Merely restricting the consumption of alcohol and other drinks to any external area provided for that purpose is insufficient. It is not the consumption of drinks that is the problem it is the people themselves and where those people are in relation to the premises that needs to be regulated, - so as to prevent crime and disorder/public nuisance.

This condition is also at variance with section 10.5 of the Statutory Guidance at A9 because it is copied directly from the operating schedule at A12 which the Statutory Guidance says is ***“not acceptable”***. The Statutory Guidance also says: ***“A condition should be interpreted in accordance with the applicant’s intention”***.

This application seeks the removal of this condition and its replacement with appropriate condition/s that satisfy the requirements of the Statutory Guidance at 1.16 and 10.5, promote the licensing Objectives and lawfully protect people living and working in the vicinity of the premises.

## Ground 6

Current condition:

***“Noise and vibration shall not emanate from the premises so as to cause a nuisance to nearby properties”.***

This condition is at variance with section 1.16 of the Statutory Guidance at A8 because it is;

- Inappropriate for the promotion of the licensing objectives
- Imprecise and unenforceable
- Ambiguous and not clear in what it intends to achieve
- Duplicates other statutory provisions
- Replicates offences in other legislation
- Not sufficiently prescriptive.

The condition is copied directly from the Government Guidance at A11 and is in effect the objective of other conditions, it is not itself a condition in any way.

Furthermore this condition is also at variance with section 10.5 of the Statutory Guidance at A9 because it is copied directly from the Operating Schedule at A12 which the Statutory Guidance says is ***“not acceptable”***. The Statutory Guidance also says; ***“A condition should be interpreted in accordance with the applicant’s intention”***.

This application seeks the removal of this condition and its replacement with the condition at A10 3/. page 4 of 8 agreed between residents and The Environmental Health dept of SDDC during the mediation process at A1 – A4. In order to satisfy the requirements of the Statutory Guidance at A8/A9 and the established legal authorities at A13 and A14. Thereby promoting the licensing objectives and lawfully protecting people living and working in the vicinity of the premises.

## Ground 7

Current condition:

***"The licensee shall ensure that no alcohol is consumed outside of the premises after the hours of 22:30 hrs".***

This condition is at variance with section 1.16 of the Statutory Guidance at A8 because it is;

- Inappropriate for the promotion of the licensing objectives
- Imprecise and unenforceable
- Ambiguous and unclear in what it intends to achieve
- Not sufficiently prescriptive.

The condition seeks to restrict the consumption of alcohol outside the premises so as to prevent crime and disorder/public nuisance, - there is however substantive evidence that it has failed. This is because it is anomalous to simply restrict the consumption of alcohol but allow the consumption of other drinks and any other activities such as smoking to take place unchecked and unsupervised in any and all areas external to the premises and at any time of day. The only exception to this being the use of the smoking shelter within the beer garden which was restricted by planning condition in December 2012 to use between 11:00 a.m and 10:00 p.m only, ***"To protect the amenity of adjoining neighbours."***

This application seeks the removal of this condition and its replacement with appropriate condition/s that satisfy the requirements of the Statutory Guidance at A8/A9, are consistent with existing planning restrictions, promote the Licensing Objectives and lawfully protect people living and working in the vicinity of the premises.

## Ground 8

Current condition:

***“A noise limiting device shall be installed, fitted and maintained by the Licensee in such manner as to control all sources of amplified music at the premises in order to ensure that music will be at a reasonable level at the nearest noise sensitive point as determined by the Environmental Health Department”.***

This condition is at variance with section 1.16 of the Statutory Guidance at A8 because it is:

- Inappropriate for the promotion of the licensing objectives
- Imprecise and unenforceable
- Ambiguous and unclear in what it intends to achieve
- Duplicates other statutory requirements.
- Replicates offences in other legislation
- Not sufficiently prescriptive.

The condition lacks any specificity as to what is meant by “reasonable level” and “nearest noise sensitive point” it is in short vague, unenforceable and of no use.

In addition this condition is at variance with the courts in the case of *Developing Retail Limited v East Hampshire Magistrates Court* 2011.

In the above case the Deputy High Court Judge Miss Clare Montgomery states:

***“The protection of nearby residential properties from noise generated by licensed activities could lawfully be prevented by the imposition of a condition that specified the particular nearby locations intended to be protected, and required that noise from licensable activities did not exceed a specified level of decibels measured at a particular location over a particular period”.*** (A13 refers)

This application seeks the removal of the above condition and its replacement with the condition at A10 6/. page 5 of 8 agreed between residents and the Environmental Health Authority of SDDC during the mediation process at A1 – A4. In order to satisfy the requirements of the statutory guidance at A8/A9 and in recognition of the legal authority above created in the case of *Developing Retail Ltd v East Hampshire Magistrates Court* 2011, thereby promoting the Licensing Objectives whilst lawfully protecting people living and working in the vicinity of the premises.

## Ground 9

Current condition:

*"The licensee shall ensure that all windows and doors are kept closed for the duration of live and recorded music and other entertainment except for access to and egress from that room. This condition is subject to the licensee erecting signs in the premises informing customers of the necessity and reason for windows and doors to remain shut during such performances of live and recorded music and other entertainment".*

This condition is at variance with Section 1.16 of the statutory guidance at A8 because it is:

- Imprecise and unenforceable
- Ambiguous.
- Not tailored to the individual type, location and characteristics of the premises and events concerned.
- Insufficiently prescriptive.

The condition lacks any specificity with regard to what is meant by *"other entertainment"* and *"that room."* In addition the condition should not be *"subject to the erection of signs"* - the erection of signs should be an additional requirement.

This application seeks the removal of this condition and its replacement with the conditions at A10 5/. page 5 of 8 agreed between residents and the Derbyshire Licensing Police during the mediation process at A1 – A4. In order to satisfy the requirements of the statutory guidance at A8, promote the Licensing Objectives and lawfully protect people living and working in the vicinity of the premises.

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## Ground 10

The legal authority at A14 established in the case of *Crawley Borough Council v Attenborough* (2006)

Lord Justice Scott Baker;

*“It is important that the terms of a premises licence and any conditions attached to it should be clear not just clear to those having specialist knowledge of licensing; such as the Local Authority or the manager of the premises, but also to the independent bystander such as neighbours, who may have no knowledge of licensing at all.*

*The terms of a licence and its conditions may of course be subject of enforcement. Breach carries criminal sanctions. Everyone must know where they stand from the terms of the document. It must be apparent from reading the document what the license and its conditions mean.”*

The conditions at ground 4, 5, 6, 7, 8 and 9 do not satisfy the above, because they are either unclear in what they intend to achieve, unenforceable, at variance with sections 10.5 and 1.16 of the Section 182 Statutory Guidance to the Act or a combination of these factors. These conditions have failed to promote the Licensing Objectives and without alteration they will continue to fail in this way whilst also failing to lawfully protect residents and other people in the vicinity of these premises.

## SUMMARY:

This application for review seeks nothing more than clarity with regards to the conditions of the Licence and parity with adjacent Licensed Premises in order to promote the Licensing Objectives and lawfully protect those people living and working in the vicinity of the Alma Inn. This would not seem unreasonable.

The application arises out of the failure of the mediation process conducted by the Derbyshire Licensing Police to bring about a negotiated settlement between the Licensee and residents/other People.

It is nonetheless stressed that whilst it has become necessary to apply for a formal review, if there remains an opportunity to reach a negotiated agreement outside of the need for a hearing before a Licensing Committee, then residents/other people are more than happy to explore any such opportunity as previously.

However it should be noted that this application is made after the following key concerned residents and other people have worked in partnership with and co-operated with all authorities over a considerable length of time in the pursuit of common goals and a preferred negotiated settlement without success.

The following key concerned residents and other people who have been involved in the mediation process endorse and support this application:

NAME	ADDRESS	SIGNATURE	DATE
<u>Stephen Spain</u>	<u>1 South Street</u>		<u>19 June 2013</u>
<u>Victoria Spain</u>	<u>1. South St</u>		<u>19 June 2013</u>
<u>JUDITH BARN</u>	<u>36 Derby Road</u>		<u>19 June 2013</u>
<u>S. FLETCHER</u>	<u>40 Derby Road</u>		<u>19-06-13</u>
<u>S. Fletcher</u>	<u>40, Derby Rd</u>		<u>19/06/13</u>
<u>P. WARRINGTON</u>	<u>14 Haddon Grove Campton</u>		<u>19/06/13</u>
<u>L. HARRISON</u>	<u>34, Derby Road</u>		<u>19/06/13</u>
			<u>15/6/13</u>

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