

APPLICATION FOR REVIEW OF PREMISES LICENCE AT THE ALMA INN, Derby Road, Melbourne, Derbyshire, DE73 1FE

Report of the Head of Environmental Health

1. PURPOSE

To consider the application for a review of the premises licence for The Alma Inn, Derby Road, Melbourne, Derbyshire, DE11 0LL. The approximate location of the premises is shown on the plan at **Appendix 1**. I have indicated on the plan the relative positions of each property that has submitted a representation for or against the review for the assistance of the sub committee.

2. BACKGROUND

- 2.1** An application (**Appendix 2**) for review as an interested party was received from Mr Roger Harrison of 34 Derby Road Melbourne Derbyshire DE73 8FE on the 19th March 2007, Mr Harrison is a person who lives within the vicinity of the premises and his application for review in accordance with the licensing objectives of the Licensing Act 2003 is on the grounds of **the Prevention of Public Nuisance**.
- 2.2** These premises came before the Licensing Sub-Committee on the 24th November 2005 and conditions were attached to the licence in relation to the prevention of public nuisance. The Decision Notice for that hearing is attached at **Appendix 3**.
- 2.3** Mr Harrison first complained to the Licensing section on the 14th June 2006 regarding noise nuisance from the premises which was investigated by both the Licensing Section and the Pollution Control Section, over several months. Separate reports have been submitted by both the Licensing Officer, Mr Jason Salter (**Appendix 4**) and Pollution Control Officer, Ian Tranter (**Appendix 5**). These reports indicate that despite numerous visits to the premises and surrounding areas neither officer has detected a significant failure to comply with the legislation or conditions which are imposed compulsory, voluntarily or by virtue of the conditions set by the Licensing Sub Committee.
- 2.4** Mr Harrison has indicated in a letter to Carl Jacobs 7/4/07 and Mr J Cripps 20/4/07 that he wishes to amend his representation and suggests the following amendments to the conditions. **Appendix 6**).
- 2.5** Mr Harrison has written to the Department on numerous occasions but these letters with the exception of 1 letter and his original review application are not included with the paperwork for the hearing – as they do not relate to this hearing.
- 2.6** Mr Cripps the owner of the Alma Inn has also forwarded a pack for inclusion within this review and included as (**Appendix 7**).
- 2.7** Subsequent to Mr Harrison's application to review we have received 4 representations for Agreeing with Mr Harrison (We actually received 5 but one was rejected, as it was judged they did not live within close proximity to the premises).(**Appendix 8**)
- 2.8** On the other side we have received 7 letters from residents in the vicinity of the Alma Inn that state that they have not experienced any problems from the Alma Inn.

- 4.3 The licensing objectives are matters that should be given paramount importance (guidance issued under Section 182 of the Licensing Act 2003 – page 11)

The licensing objectives are :-

- The prevention of crime and disorder
- Public Safety
- The prevention of public nuisance and
- The protection of children from harm

In relation to the guidance I would refer you to page 54 paragraph 5.50 – Steps to promote licensing objectives

Page 59 paragraph 5.68C and 5.69 – Considering applications for new and major variations of premise licence.

Page 79 paragraph 7.13 Duplication with other statutory provisions

Page 80 paragraph 7.17- 7.19 - Proportionality

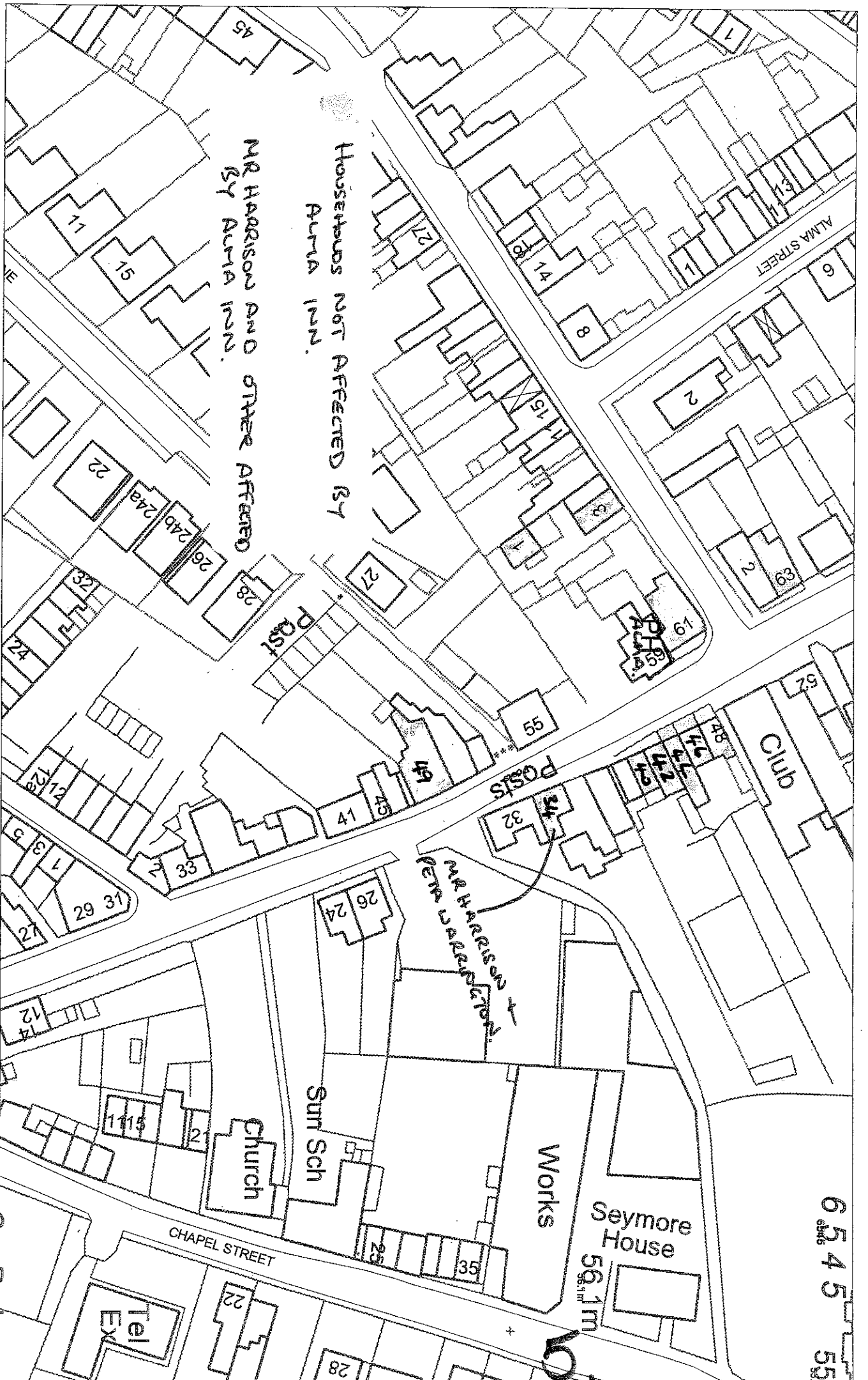
Pages 86 –87 paragraphs 7.38 to 7.45 – Public Nuisance

Page 66 paragraphs 5.99 –5.111 Reviews

- 4.4 Options open to the Sub-Committee are:-

1. The licensing Authority may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives.
2. The Licensing Authority can issue a informal warning to the licence holder and / or recommend improvement within a particular period of time.
3. Where the licensing authority considers that action under its statutory powers are necessary, it may take any of the following steps;
 - Modify the conditions of the premise licence (which includes adding new conditions or any alteration or omission of an existing condition). For example by reducing the hours of opening or by requiring door supervisors at particular times.
 - To exclude licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption)
 - To remove the designated premise supervisor, for example, because they consider that the problem are the result of poor management;
 - To suspend the licence for a period not exceeding three months;
 - To revoke the licence.

In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response (***taken from Guidance issued under section 182 of the Licensing Act 2003 – Powers of a licensing authority on the determination of a review Page 67 paragraphs 5.107 to 5.110 additional information is available on page 68***)



APPENDIX 2.

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

South Derbyshire
District Council

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

19 MAR 2007

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 WILLIAM 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

ALMA INN, DERBY ROAD, MELBOURNE.

Post town

DERBY

Post code (if known)

DE73 1FE

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

MR JAMES CRIPPS

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

NOT KNOWN.

Part 2 - Applicant details

I am

Please tick yes

1) an interested party (please complete (A) or (B) below)

a) a person living in the vicinity of the premises



b) a body representing persons living in the vicinity of the premises



c) a person involved in business in the vicinity of the premises



d) a body representing persons involved in business in the vicinity of the premises



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



(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

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

N/A.

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

Please tick one or more boxes

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

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

Please state the ground(s) for review (please read guidance note 1)

THE ALMA INN HAS CONSISTENTLY FAILED TO OBSERVE VARIOUS CONDITIONS OF ITS LICENCE SINCE THE ISSUE OF ITS LICENCE ON 24th NOVEMBER 2005. —

— IN PARTICULAR THOSE RELATING TO THE PREVENTION OF A PUBLIC NUISANCE, LISTED BELOW.

— THE CLOSURE OF ALL WINDOWS AND DOORS DURING LIVE AND RECORDED ENTERTAINMENT

— THE INSTALLATION OF A NOISE LIMITING DEVICE

— THE CONSUMPTION OF ALCOHOL OUTSIDE THE PREMISES AFTER 10:30 P.M.

IT IS CONSIDERED BY THE APPLICANT THAT THESE CONDITIONS HAVE PROVED PARTICULARLY WEAK, INSUFFICIENT, IMPRACTICABLE AND UNENFORCEABLE, LEADING TO A CONTINUED AND ONGOING PUBLIC NUISANCE.

20/2

INSTANCES OF THE BREACH OF THE CONDITIONS OF THE LICENCE ARE WELL DOCUMENTED IN LETTERS FROM THE APPLICANT TO THE LICENSING TEAM AT SWADLINCOTE — IN PARTICULAR TO MR JASON SLATER — WHO IN TURN HAS SPECIEN AND WRITTEN TO THE WICREBE ON SEVERAL OCCASIONS IN RELATION TO THESE BREACHES. — (COPIES OF ALL CORRESPONDENCE ARE AVAILABLE ON REQUEST)

FURTHER BREACHES OF THE CONDITIONS ARE EQUALLY IF NOT BETTER DOCUMENTED IN LETTERS TO MR IAN TRANTER OF THE NOISE POLLUTION TEAM FROM THE APPLICANT.

A 6 WEEK SURVEY WAS COMPLETED BY THE APPLICANT DURING THE SUMMER OF 2006, TO INCLUDE DATES OF EXCESSIVE NOISE AND BREACHES OF CONDITIONS, EVEN DOWN TO THE INDIVIDUAL SONGS AND WORDS OF THESE SONGS THAT CAN BE HEARD INSIDE THE HOME OF THE APPLICANT.

AS A RESULT OF THIS SURVEY A RECORDING MACHINE WAS PLACED ON THE PREMISES OF THE APPLICANT TO GATHER EVIDENCE AND RECORDINGS WERE MADE OF THE NOISE EMANATING FROM THE ALMA INN. —

MR IAN TRANTER WROTE THE FOLLOWING: —

"THE TAPE RECORDING FROM YOUR PROPERTY WAS ANALYSED ON 20/11/06 AND IT WAS FELT THAT NOISE FROM AMPLIFIED MUSIC — (PARTICULARLY ON THE 2/11/06) WAS AT A LEVEL THAT WAS UNACCEPTABLE."

THE NOISE POLLUTION TEAM FROM S.O.D.C. SWADLINCOTE ARE STILL PURSUING INVESTIGATIONS AND REMEDIES TO THE PROBLEM OF NOISE POLLUTION FROM THE ALMA INN.

— OVER 12 MONTHS AFTER THE LICENCE FOR THE ALMA INN WAS ISSUED!

Please tick yes

- 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 3)

Signature of applicant or applicant's solicitor or other duly authorised agent (See guidance note 4). If signing on behalf of the applicant please state in what capacity.

Signature

R. Harrison

Date

15/03/07

Capacity

Applicant

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 5)

*34, DERBY ROAD
MELBOURNE
DERBYSHIRE*

Post town

DERBY

Post Code

DE73 8FE

Telephone number (if any)

01332 862465

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

Notes for Guidance

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

Cottage Antiques

34 Derby Road, Melbourne,
Derby, DE73 1FE
Telephone: 01332 862465

IN THE EVENT THAT THE ALMA PUBLIC HOUSE IS GIVEN EXTENDED OPENING HOURS

In the interests of local residents and in line with the licensing objective, "THE PREVENTION OF PUBLIC NUISANCE", it is respectfully requested that the following conditions be attached to any such licence.

Condition 1

The limited car parking facility be solely used at all times for the parking of cars and not for any other use such as the consumption of alcohol or the erection of marquees for external entertainment. And that signs be attached to all doors opening onto the Car park forbidding the consumption of alcohol in this area.

Reasons

In the interests of Highway safety and to limit the extra congestion imposed on local residents by the customers of the Alma Public House.

Furthermore. To prevent the gathering of large numbers of people on warm summer evenings who congregate outside the premises and cause a public nuisance through their loud and abusive language whilst consuming alcohol at a late hour, and who can be intimidating to anyone walking along the public highway adjacent to the car park.. There being no boundary wall between the car park and the public highway.

Condition 2

A permanent barrier (in line with current planning restrictions) be erected between the designated external drinking area and the car park so as to avoid people spilling out of this area onto the car park and the public highway whilst consuming alcohol. And that this dedicated drinking area be limited in use up to the hour of 11.00 pm only. All consumption of alcohol to take place inside the premises after this hour. Appropriate signage to be displayed in this area informing customers of this policy.

Reasons

To limit the disturbance to local residents when large numbers of customer congregate outside the premises causing excessive amounts of noise at a very late hour.

SOUTH DERBYSHIRE DISTRICT COUNCIL
LICENSING AND APPEALS SUB-COMMITTEE

APPLICATION FOR A PREMISES LICENCE

THE ALMA INN, DERBY ROAD, MELBOURNE, DERBYSHIRE

HELD ON THURSDAY 24TH NOVEMBER 2005 AT 10:00AM
(following adjournment on 28th October 2005)

In attendance:-

Commenced : 10:00am
Closed : 12:50pm

The Panel

Councillor Bob Southern (Linton ward) (Chair)
Councillor Margaret Littlejohn (Hilton ward)
Councillor Bill Dunn (Midway ward)

Legal Advisor to the Panel

Miss. Jeanette Tsoi - Principal Legal Officer
Mrs. Ardip Kaur

Council's Licensing Representative

Mr. Jason Salter – Licensing Enforcement Officer
Mr. Mike Sunter - Licensing Enforcement Officer (observer)

Applicant

Mr. James Edward Cripps – Licensee at The Alma Inn
Ms. Jayne Anne Harrison – Premises Supervisor at the Alma Inn
Mr. Phil Tolley – Union Pub Company

Interested Parties

Mr. J Williams – 65 Derby Road, Melbourne
Mr. W N K Rowley – 63 Derby Road, Melbourne
Mr. R Harrison – 34 Derby Road, Melbourne
Ms. L Smith – 41 Derby Road, Melbourne (not present)
Ms. J Reid – 49 Derby Road, Melbourne (not present)
Mr. I Thomas MBE – 36 Derby Road, Melbourne (not present)
Mr. & Mrs. Trotter – 38 Derby Road, Melbourne (not present)

Clerk to the Sub-Committee

Ms. Debra Townsend – Democratic Services Assistant

The Sub-committee then heard in person from Mr. Roger Harrison of 34 Derby Road, Melbourne who was also an Interested Party and had previously provided a written representation. Mr Harrison read out the letter he had submitted as his representation, which outlined, that the Alma Inn was located within a well populated area of the town and had a history of disorder resulting in the attendance of Police, and also had a history of live music playing in premises which lack in soundproofing. Mr Harrison stated that he did not object to people drinking into the early hours of the morning but did object to entertainment, which would be noisy. Mr Harrison summarised by stating that provided that the new licence did not include the provision of entertainment past the hour of 11:00pm, then he had no objection to people drinking past this time.

6. The Panel asked questions of the Interested Parties and invited the Council's Licensing representative and the Applicant to put questions to them as well.
7. The Sub-committee heard in person from Mr. James Cripps, the Applicant and Licensee for the Alma Inn public house. Mr Cripps stated that this was his first venture as a landlord and did not want to operate a late licence. Mr Cripps went on to say that the dining room was a small box area and as the Supper Licence was not utilised he had decided to situate a pool table in the dining area. Mr Cripps also expressed that the Police had not attended any incidents at the premises whilst he was landlord, and that he could not be held responsible for any previous bad behaviour by the customers. Mr Cripps mentioned that he did ask customers to leave the premises quietly on their departure, but it was not possible for him to escort people home. Mr Cripps stated that as new landlord to the premises he would do all he could to reduce the nuisance to neighbours, as he did not wish for any animosity with neighbouring residents.
8. The Panel asked questions of the Applicant and invited the Interested Parties and Council's Licensing Representative to put questions to them as well.
9. The Chair invited the Interested Parties and Applicant to sum up their representation and the Panel then retired from the Council Chamber with the Legal Advisor and Clerk to the Sub-Committee in order to deliberate on the matter in hand.
10. In making its decision, the Panel has had regard to the South Derbyshire Council's Licensing Policy, the Guidance issued under Section 182 of the Licensing Act 2003 and the Human Rights Act 1998, as well as the evidence presented in writing and given orally at the Hearing.
11. The Panel also had regard to the four 'licensing objectives' namely:-
 - ◆ Prevention of Crime and Disorder
 - ◆ Public Safety
 - ◆ Prevention of Public Nuisance
 - ◆ Protection of Children from Harm
12. The Panel considered in detail the representations of the Council's Licensing Enforcement Officer, Mr Jason Salter, the Interested Parties, Mr Williams, Mr Rowley, and Mr Harrison, and Mr James Cripps, the Applicant.

In relation to the Late Night Refreshment these hours were to be as follows:-
(Standard times)

- Sunday to Thursday : 10.00am until 11.30pm;
- Friday and Saturday : 10.00am until 12.30am;

(Non Standard times)

- Bank Holidays; Sunday and Monday ; 10.00am until 12.30am;
- Christmas Eve : 10.00am until 12.30am;
- Boxing Day : 10.00am until 12.30am;
- New Years Eve: 10.00am to terminal hour New Years Day

In relation to Performances of Dance these hours were to be as follows:-
(Standard times)

- Sunday to Thursday : 10.00am until 11.00pm;
- Friday and Saturday : 10.00am until 12.00am (midnight);

(Non Standard times)

- Bank Holidays; Sunday and Monday ; 10.00am until 12.00am (midnight);
- Christmas Eve : 10.00am until 12.00am (midnight);
- Boxing Day : 10.00am until 12.00am (midnight);
- New Years Eve : 10.00am until 1.00am;

In relation to Facilities for Making Music these hours were to be as follows:-
(Standard times)

- Sunday to Thursday : 10.00am until 11.00pm;
- Friday and Saturday : 10.00am until 12.00am (midnight);

(Non Standard times)

- Bank Holidays; Sunday and Monday ; 10.00am until 12.00am (midnight);
- Christmas Eve : 10.00am until 12.00am (midnight);
- Boxing Day : 10.00am until 12.00am (midnight);
- New Years Eve : 10.00am until 1.00am;

In relation to Facilities for Dancing these hours were to be as follows:-
(Standard times)

- Sunday to Thursday : 10.00am until 11.00pm;
- Friday and Saturday : 10.00am until 12.00am (midnight);

(Non Standard times)

- Bank Holidays; Sunday and Monday ; 10.00am until 12.00am (midnight);
- Christmas Eve : 10.00am until 12.00am (midnight);
- Boxing Day : 10.00am until 12.00am (midnight);
- New Years Eve : 10.00am until 1.00am;

In relation to Indoor Sporting Events these hours were to be as follows:-
(Standard times)

- Sunday to Thursday : 10.00am until 11.00pm;
- Friday and Saturday : 10.00am until 12.00am (midnight);

(Non Standard times)

- Bank Holidays; Sunday and Monday ; 10.00am until 12.00am (midnight);
- Christmas Eve : 10.00am until 12.00am (midnight);
- Boxing Day : 10.00am until 12.00am (midnight);

All parties may appeal to the Magistrates Court against this Decision. Guidance on this process is attached to the Decision Notice.

Date of Decision : Thursday 24th November 2005

Signed:
Councillor Bob Southern (Chair of the Panel)

Dated:2005

Appendix 4

THE ALMA INN

On 24th November 2005 the licensing sub-committee granted an application for a premise licence in respect of 'The Alma Inn' 59, Derby Road, Melbourne. Derbyshire. DE73 8FE.

The licence was granted subject to the following conditions; that are associated with the licensing objective of 'The prevention of Public Nuisance'.

1. Noise and vibration shall not emanate from the premises so as to cause a nuisance to nearby properties.
2. Where appropriate, prominent, clear and legible notices shall be displayed at all exits, requesting the public respect the needs of local residents and to leave the premises and area quietly.
3. 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 and egress from that room.
4. The licensee shall install a noise- limiting cut out device at a decibel rating determined by South Derbyshire Council's Environmental Health Department.
5. The licensee shall ensure that no alcohol is consumed outside of the premises after the hours of 10.30pm.

On 14th June 2006, I received a letter of complaint from Mr R. Harrison, c/o 'Cottage Antiques', 34, Derby Road, Melbourne. Derbyshire. DE73 1FE. A copy of the letter is attached. Mr Harrison made allegations that the licensee was breaching the aforementioned conditions and requested that the latter be 'reminded of his obligations towards the public' in anticipation of preventing future reoccurrences.

On the 20th June 2006, I visited and spoke with Mr Cripps the licensee of the public house and informed him about the matters highlighted in Mr Harrison's letter. Mr Cripps denied that he was breaching any conditions of the licence. In relation to condition 4 above, I can confirm that a 'noise limiting' device was installed at that time and I was assured that it was used when 'live entertainment' takes place. I wrote to Mr Harrison that date and updated him. A copy of the letter is attached.

At approximately 10.45pm on 22nd June 2006 together with Mr Sunter (licensing Enforcement Officer) I visited the Alma Inn. There was 'live entertainment' at the venue, Mr Cripps was present and we were satisfied that all conditions were being adhered to. In respect of 'noise' I could not hear any noise when stood on the pavement directly opposite the public house.

On 24th July 2006 I received a telephone call from Mr Harrison who again complained that the conditions were not being adhered to. I informed Mr Harrison that I had visited the venue and did not witness any breach of conditions. The following day 25th July 2006 I spoke with Mr Cripps and impressed on him the need to continue to observe all conditions of licence. Mr Cripps agreed to do so.

Appendix 5