

Cottage Antiques



Derby Road Melbourne Derby DE73 1FE

Antique Fine & Country Furniture - Anything Old Bought & Sold

Debra Townsend
c/o SDDC
Civic Offices
Swadlincote
Derbys.

13th August 2013

South Derbyshire
District Council

14 AUG 2013

Corporate Services

Dear Ms Townsend

Re: Licensing Committee Hearing Wednesday 21st August 2013.

In response to the Notice of Hearing:

- I intend to attend the Hearing.
- I do not intend to call any witnesses.
- I do consider the Hearing to be necessary.

As requested please find enclosed a written summary of the representations I wish to make and further documentary and other evidence in support of these representations. When copying this information to the parties to the hearing and the Licensing Committee members may I respectfully request that the highlighted sections are reproduced. Sections have been highlighted so as to focus on important parts of these representation and evidence.

Please could you confirm receipt of this letter to —

Yours sincerely

Roger Harrison.

1.

Proprietor :- Roger Harrison

SUMMARY OF REPRESENTATIONS

The predominantly residential location, conservation location, scale and fabric of the building coupled with the huge scope of the application demand that, in the event any premises licence is granted at all, appropriate conditions are attached to the licence in order to promote the Licensing Objectives and thereby protect:

- people living and working in the vicinity
- people carrying on businesses in the vicinity
- people visiting the premises.

The conditions sought by these representations in the above circumstances are the following;

As a minimum requirement the conditions sought are those attached to the nearby premises known as Harpur's Hotel and Restaurant. With consideration to the fact that Harpur's premises are situated in a predominantly commercial area only and the significant differences in the building size, fabric and external areas with regard to the licensable activities being sought. This would seem wholly appropriate and not at all unreasonable in such circumstances and could not fail to be seen as promoting the Licensing Objectives.

I draw your attention to the representations made by councillors Hewlett/Harrison ^(A) with regard to conditions on premises licences and the forthcoming review hearing of the Alma Inn premises licence which is situated directly opposite the Liberal Club.

These representations say;

'It is absurd that such a difference should exist between two premises only a few hundred metres away from each other.'

Section 1.7 of the Section 182 Statutory Guidance to the Licensing Act supports the above statement in saying:

'It is a key mechanism for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality.'

In relation to 50 Derby Road, Harpur's and The Alma Inn some conditions can and should be identical, other conditions can and should be different. Conditions should recognise the characteristics and fabric of these buildings, the location and the licensable activities being sought. The differences in location alone should demand more stringent conditions in relation to Noise Breakout at 50 Derby Road than at Harpur's for example. Whereas the protection of children from harm is universal.

^(B) In the event that the Committee are minded to grant some form of licence rather than a refusal these representations also seek the attachment of the conditions at 19.4 and 19.5 taken from A N Other Councils Pool of Model Conditions in addition to the attachment of those already in place at Harpur's.

1 of 2
10 Apr

(C) These representations also seek the addition of the identical condition regarding the control of fume emission at the premises as described on the planning decision notice for the Indian Restaurant opposite these premises. Adjusted for the purposes of this application for a premises licence under the Licensing Act 2003.

When imposing these conditions or contemplating the imposition of any conditions upon any grant of any licence it is respectfully requested that the Licensing Committee have particular regard for the following:

- Sections 10, 11, 12, 13, and 14 of the Council's own Licensing Policy.
- Section 1.16 and section 10.5 of the Section 182 Statutory Guidance.
- Existing case law in relation to conditions imposed on licences as highlighted by Patterson's Licensing Acts and in particular that arising from *Crawley Borough Council v Attenborough* 2006 and *Developing Retail Ltd v East Hampshire Magistrates Court* 2011.

In conclusion it is also respectfully requested that whatever course of action the Licensing Committee takes with regard to the licence and the appropriate conditions requested to promote the 4 Licensing Objectives. Then they provide to all parties full written comprehensive reasons for their decisions that address the extent to which the decisions have been made with regard to these representations and others, the Licensing Act 2003, the Licensing Policy of the Council and the Section 182 Statutory Guidance to the Act. In accordance with section 23(c) of the Licensing Act, Section 12.10 of the Statutory Guidance and section 18 of the Council's own Licensing Policy.

(H) Furthermore that such reasons are given and made in accordance with existing case law. Particular attention being paid to that arising from *Hope and Glory v Westminster City Council* 2011 and *Little France v Ealing Borough Council* 2013, - where this relates to the provision of reasons for decisions by Licensing Committees.

H.

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+ 1/11

(A)

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.

- 19.2 When live music or recorded music takes place inside the premises all doors and windows will be kept shut. Entrance/exit doors will be fitted with self-closing mechanism that will enable these doors to automatically close once persons enter or leave the premises.
- 19.3 A designated premises supervisor or a nominated representative shall keep written records of sound checks when live music, recorded music or amplified sound is taking place. Sound checks must be made inside and outside the premises at all entrance/exit doors to the premises and to walk outside around the premises on all sides where there are residential properties. The record must contain (a) date and time (b) type of event (c) name of person carrying out the sound check (d) location of the check (e) whether the person determined if the noise was set to a level as to cause a complaint (f) action taken in relation to noise levels i.e. being increased, decreased or no action (g) The noise must be assessed at the start of the event and at intervals no less than every one hour until the end of the event.
- 19.4 No regulated entertainment will take place until such time as: -
- the licensee submits to the Council Environmental Health an acoustic report prepared by a reputable noise consultant, which demonstrates how music and other amplified sound generated at the premises will be contained within the said premises, thereby not causing a disturbance to neighbouring premises. The report shall have regard to any noise caused by any ventilation system and any likely escape of noise from the system, the opening of doors for patrons' acoustic characteristics of fire doors, windows, any flat roofs and the general fabric of the building. Where sound transmission is likely through the structure of the building the report must show in detail how this will be eradicated.
 - Any work to the building or system must be carried out as per the report recommendations.
 - The acoustic report will be checked and any relevant work to the system or building on completion must be approved in writing by Environmental Health before regulated entertainment is authorised to take place.
- 19.5 The licensee must create a written scheme of soundproofing of the premises {or state a location}. The scheme will outline a timescale for implementing any works required to be carried out. Environmental Health will be sent the written scheme and notified on the completion and approved in writing by them before regulated entertainment can take place.
- 19.6 A noise limiting device shall be installed, fitted and maintained as to control all sources of amplified music or speech at the premises to prevent noise nuisance to neighbouring properties. The noise limiter shall be set to maintain a maximum level which is agreed in writing with Environmental Health and amended as and when required to deal with any reported nuisance/complaint.
- 19.7 The {doors / windows} at {specific location} shall be fitted with

- The facilities, arrangements and procedures to minimise the harmful effects of drug misuse
- Any other relevant matter(s).

13.0 Public Nuisance

13.1 The applicant will only be expected to prevent public nuisance that is under their direct control.

Here are some issues, which applicants may need to comment on in their Operating Schedule;

- Prevent noise and vibration escaping from the premises, such measures may include sound proofing, air conditioning, acoustic lobbies and noise limiters;
- Prevent disturbance by customers arriving at, or leaving the premises, which is usually of greater significance later into the evening and in the early morning. Schedules may need to address the potential disturbance caused by queuing;
- Prevent potential litter problems in the vicinity of the premises and caused by their business activity. These could include the distribution of flyers, fly posting, food packaging left by customers from late night refreshment premises;
- Control nuisance associated with public disturbance;
- The generation of odour, for example from the preparation of food
- Any other relevant matter(s)

13.2 The Council recognises that the control of nuisance that is not within the vicinity of the premises or the responsibility of the licence holder falls outside the scope of the Act.

13.3 The Council recognises the cultural benefit of live entertainment / performances, including: music, singing, dancing, carnival events, comedians, children's entertainers and performance artists such as jugglers, mime artists and theatre. A cultural strategy would promote the enjoyment, involvement and celebration of cultural experiences. The potential for limited disturbance in neighbourhoods will be balanced with these benefits, particularly for children.

Comment

It is an offence under section 145 of the Act for an unaccompanied child under the age of 16 to be present in premises primarily or exclusively used for the supply or sale of alcohol. An adult must accompany children

14.0 Children

14.1 The Council recognises the great variety of premises for which licences may be sought, for instance theatres, cinemas, restaurants, pubs, nightclubs, cafes, takeaways, community halls and schools.

14.2 The Council will not impose conditions that restrict access to children to any type of premises unless it is considered necessary to protect them from physical moral or psychological harm.

14.3 For example premises which would give rise for concern are;

- where entertainment or services of an adult or sexual nature are commonly provided
- where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises

Comment

It is not possible to give an exhaustive list of what amounts to entertainment or services of an adult or sexual nature. Applicants, responsible authorities and licensing authorities will need to apply common sense to this matter. However such entertainment or services, for example, would generally include topless bar staff, striptease, lap, table or table dancing, performances involving feigned violence or horrific incidents, feigned or actual sexual acts or fetishism or entertainment involving strong and offensive acts.

passageways clear, securing floor coverings, the use of suitable floor surfaces and, finally, a prohibition upon the accumulation of rubbish etc. The council contended, *inter alia*, that a licensing authority could properly seek to 'strengthen' other legislation governing the operation of the premises without specific reasons relating to the premises in question. It also sought to argue that a licensing authority was under a duty to impose conditions consistent with an operating schedule, regardless of whether they would be required to promote the licensing objectives. The learned Deputy Judge considered that the claim raised two separate issues: first, the validity of the application for a premises licence and second, how a valid application is to be dealt with. In his judgement, following full argument on behalf of both parties, (see *Practice Direction (Citation of authorities)* [2001] 1 WLR 1001 concerning the use in the courts of judgements arising from applications attended by one party only, applications for permission to appeal and decisions on applications attended by one party only, the application was arguable, unless such a judgement clearly indicated that it purported to establish a new principle or to extend the present law) he held that:

- (1) s 18(2) gave a licensing authority a power to impose conditions consistent with the schedule; it did not impose a duty so to do;
- (2) if the steps were proposed in language which was general or opaque, the licensing authority might impose a condition describing more specifically what was proposed if that was necessary to promote the licensing objectives;
- (3) it was for the applicant to determine what to include in his application (*R (on the application of British Beer and Pub Association) v Canterbury City Council* [2005] EWHC 1318 (Admin), [2006] LCR 596 considered);
- (4) there was no legal obligation to impose a condition in order to promote the licensing objectives, to give effect to anything contained in the operating schedule, if the authority considered that compliance with other legislation was sufficient for that purpose;
- (5) whether additional conditions were ones which were 'necessary to promote the licensing objectives', or were adequately dealt with by existing legislation, was a matter of law and fact for the decision maker to determine.

In *Bristol City Council* the court held that in the case of each condition the conclusion of the magistrates had been one that they were reasonably entitled to reach. The court felt that it was not necessary to determine the further issue, raised in argument, whether it was necessary for an applicant to state specifically in his operating schedule that (quoting para 8.32 of the Secretary of State's statutory guidance) 'no measures will be needed to promote one or more of the licensing objectives, for example, because they are adequately dealt with by other existing legislation', because the local authority had accepted that 'the application was valid given what it did state'.

For a case involving similar considerations, see *Brighton & Hove City of Brighton Licensing Board* [2011] CSIH 46.

For a case decided under the Environmental Protection Act 1990, but which could in certain circumstances have a bearing upon the determination of new applications under s 18 and applications to vary under s 33, see *St Albans District Council v Patel* [2008] EWHC 2767; [2009] LLR 76, which was a case relating to breach of a noise abatement notice issued in relation to a pub garden. The licence holder or anyone involved in the organisation of entertainment should ensure that any noise emanating from the premises was such as would not cause annoyance or disturbance to residents in the locality. After the arrival of a new proprietor the beer garden became popular and one of the neighbours complained, resulting in the issue of an abatement notice. Following a prosecution for breach of the notice magistrates duly found that it had been contravened and that the noise coming from the garden did constitute a statutory nuisance. However the licensee was acquitted as the court accepted that he had used the 'best practicable means' to prevent or to counteract the effect of the nuisance (the statutory defence under s 80(7) of the Act). The magistrates, in reaching their decision, considered that it was significant that the neighbour should have known that the garden of the pub was licensed when she moved in and, although there was no suggestion

that she should have realised that that

cation to state a case, leading to an application for judicial review of their refusal. The Administrative Court decided to review the substantive decision of the magistrates (*St Albans District Council v Patel* [2008] EWHC 2767 (Admin) considered) stating that the 'defendant must establish why all other obvious or, on the face of it, practicable means are not practicable' and finding that the statutory defence had not been made out. Music could have been played indoors and not in the marquee. The court therefore decided to quash the acquittal, remit the case to the magistrates and to make a direction that they reconsider it and reach a decision in accordance with the judgment of the court.

It is clear that no sale by retail of alcohol may be made under the premises licence at a time when there is no designated premises supervisor in respect of the premises licence, or at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended. The second condition is that every sale by retail of alcohol under the premises licence must be made or authorised by a person who holds a personal licence. Where a premises licence authorizes the exhibition of films the licence must include a condition requiring the admission of children to the exhibition of any film to be restricted in accordance with LA 2003, s 20. Where a premises licence includes a condition that at specified times one or more individuals must be at the premises to carry out a security activity, the licence must include a condition that each such individual must be licensed by the Security Industry Authority.

Conditions. The drafting of conditions continues to cause problems to both practitioners and authorities. As s 182 Guidance has shown, difficulties can be created by the use of schedules of 'model' conditions, which all too easily lend themselves to indiscriminate use without regard to the circumstances of the individual case. It is submitted that the approach to be preferred is for those drafting conditions to abide by the fundamental rules applicable to such a process. Consideration of the relevant case law (see below) suggests that those drafting conditions should endeavour wherever possible to ensure that each individual condition:

- (1) is necessary (for the promotion of the licensing objectives);
- (2) arises from, or relates to, the proposed licensable activity;
- (3) is proportionate (to the mischief to be avoided);
- (4) does not derogate from an entitlement enshrined in statute;
- (5) is not inconsistent with the requirements of policy;
- (6) has a meaning which would be clear and unambiguous (ideally to a lay person);
- (7) is self-contained and does not require reference to some other document;
- (8) does not require the licensee to achieve some end beyond his control;
- (9) is capable of enforcement (if appropriate) in the event of a breach; and is
- (10) *intra vires* the powers of a licensing authority.

At the same time, responsible authorities must take care not to raise issues, or invite conditions, which may be adequately dealt with under existing powers. In this regard, note para 3.53 of the Guidance published by the Secretary of State which states:

'Statements of licensing policy should include a firm commitment to avoid duplication with other regulatory regimes so far as possible. For example, legislation governing health and safety at work and fire safety will place a range of general duties on the self-employed, employers and operators of venues both in respect of employees and of the general public when on the premises in question. Similarly, many aspects of fire safety will be covered by existing and future legislation. Conditions in respect of public safety should only be attached to premises licences and club premises certificates that are "necessary" for the promotion of that licensing objective and if already provided for in other legislation, they cannot be considered necessary in the context of licensing law. Such regulations will not however always cover the unique circumstances that arise in connection with licensable activities, particularly regulated entertainment, at specific premises and tailored conditions may be necessary'.

Further, in para 7.13:

'The only conditions which should be imposed on a premises licence or club premises certificate are those which are necessary and proportionate for the promotion of the licensing objectives. In addition, if other existing law already places certain statutory

(F)

10. Conditions attached to premises licences and club premises certificates

2013

General

- 10.1 This chapter provides further guidance in relation to conditions attached to premises licences and club premises certificates. General principles on licence conditions are set out in Chapter 1 (see paragraph 1.16).
- 10.2 Conditions include any limitations or restrictions attached to a licence or certificate and essentially are the steps or actions that the holder of the premises licence or the club premises certificate will be required to take or refrain from taking in relation to the carrying on of licensable activities at the premises in question. Failure to comply with any condition attached to a licence or certificate is a criminal offence, which on conviction is punishable by a fine of up to £20,000 or up to six months' imprisonment. The courts have made clear that it is particularly important that conditions which are imprecise or difficult for a licence holder to observe should be avoided.
- 10.3 There are three types of condition that may be attached to a licence or certificate: proposed, imposed and mandatory. Each of these categories is described in more detail below.

Proposed conditions

- 10.4 The conditions that are appropriate for the promotion of the licensing objectives should emerge initially from the risk assessment carried out by a prospective licence or certificate holder, which they should carry out before making their application for a premises licence or club premises certificate. This would be translated into the steps recorded in the operating schedule or club operating schedule, which must also set out the proposed hours during which licensable activities will be conducted and any other hours during which the premises will be open to the public.
- 10.5 It is not acceptable for licensing authorities to simply replicate the wording from an applicant's operating schedule. A condition should be interpreted in accordance with the applicant's intention.

Consistency with steps described in operating schedule

- 10.6 The 2003 Act provides that where an operating schedule or club operating schedule has been submitted with an application and there have been no relevant representations made by responsible authorities or any other person, the licence or certificate must be granted subject only to such conditions as are consistent with the schedule accompanying the application and any mandatory conditions required under the 2003 Act.
- 10.7 Consistency means that the effect of the condition should be substantially the same as that intended by the terms of the operating schedule. If conditions are broken, this may lead to a criminal prosecution or an application for a review and it is extremely important therefore that they should be expressed on the licence or certificate in unequivocal and unambiguous terms. The duty imposed by conditions on the licence holder or club must be clear to the licence holder, club, enforcement officers and the courts.

Consistency with steps described in operating schedule

- 7.14 The 2003 Act provides that where an operating schedule or club operating schedule has been submitted with an application and there have been no relevant representations made by responsible authorities or interested parties, the licence or certificate must be granted subject only to such conditions as are consistent with the schedule accompanying the application and any mandatory conditions required by the Act itself.
- 7.15 Consistency means that the effect of the condition should be substantially the same as that intended by the terms of the operating schedule or club operating schedule. Some applicants for licences or certificates supported by legal representatives or trade associations can be expected to express steps necessary to promote the licensing objectives in clear and readily translatable terms. However, it must be recognised that some applicants will express the terms of their operating schedules less precisely or concisely. Ensuring that conditions are consistent with the operating schedule will then be more difficult. It must be remembered that conditions if broken may give rise to criminal prosecution or lead to an application for a review and it is extremely important therefore that they should be expressed on the licence or certificate in unequivocal and unambiguous terms. It must be clear to the holder of the licence or club, to enforcement officers and to the courts what duty has been placed on the holder or club in terms of compliance. For example, a condition relating to the safe capacity of premises following representations by the fire authority should be expressed in clear and simple terms, for example:

“The maximum occupancy of the building at any one time will be restricted in respect of the ground floor to 300 persons and in respect of the first floor to 100 persons.”

It should also be made clear whether a limit on capacity includes or excludes staff and performers working at the premises. For the sake of consistency, the Secretary of State recommends that capacity limits, where considered necessary and appropriate should include staff and performers. Where relevant representations have been made by either a responsible authority or an interested party and following a hearing the licensing authority has determined that the steps needed to promote the licensing objectives proposed by the applicant should be modified, the licensing authority will be able to revise the conditions expressed in the operating schedule or club operating schedule in terms that it considers necessary. But clarity and simplicity should guide all such decisions.

- 7.16 It should be noted that in preparing schedules, as stated earlier in the Guidance, it is in the interests of applicants to consult with responsible authorities about the steps that are necessary to take to promote the licensing objectives. Ideally, therefore, there will be opportunities for the experts and the applicants to agree a way forward before applications are finalised and representations are lodged which necessitate a hearing.

Proportionality

- 7.17 By providing that only necessary conditions may be imposed, the 2003 Act requires that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned. As has been said earlier, this effectively rules out standardised

High court critical of lack of reasons provided by licensing sub-committee and magistrates court

The High Court, in *Little France Ltd v Ealing London Borough Council*, has quashed a decision made by a Licensing Sub-Committee, confirmed on appeal in the Magistrates' Court, to restrict a nightclub's opening hours after they failed to provide reasons for the reduction.

The Premises Licence for the Black George Pub/Nightclub in Ealing, West London was reviewed following a firearms incident near to the premises. Following the review hearing, the Licensing Sub-Committee imposed a number of restrictions on the premises including a new, earlier terminal hour for the nightclub of 2 am.

The Licensing Sub-Committee did not provide reasons for their decision to bring the terminal hour forward to 2 am. On appealing the reduction of the trading hours, in the Magistrates' Court, a submission was made that the matter should be remitted to the Licensing Sub-Committee so that a fully reasoned decision could be provided. The Magistrates declined, instead indicating that they agreed with the Sub-Committee that the terminal hour should be 2 am and accordingly dismissed the appeal. Despite statute, guidance and precedent highlighting the need for proper reasons to be provided by the Magistrates in licensing appeals, the Magistrates' Court's reasoning did not extend far beyond confirming that they felt that the decision was correct, proportionate and reasonable.

The Case Stated to the High Court included four questions, summarised as follows:

1. Where the Licensing Authority had failed to give any reasons for its decision, how should a Magistrates Court address an appeal?
2. Was the Court bound to give any reasons why it preferred the evidence adduced by the Respondents rather than that of the Appellant?
3. Did the Court apply the wrong test when limiting the hours during which licensable activities could take place?
4. Were the reasons in relation to the awards of costs ones that could have been given by any bench of Magistrates acting reasonably (in the *Wednesbury* sense)?

The High Court found in favour of the Applicant in relation to all four questions. The High Court commented that there may well be instances where a wholly unreasoned decision might be correct, but that the Magistrates' Court on appeal could not simply endorse such a decision; it had to provide reasons of its own. The Magistrates' Court had failed to show how they deemed the restriction on the terminal hours was necessary. As a result, it failed to apply the correct test.

The High Court, in varying the decision of the Magistrates' Court, committed the matter back to the Licensing Sub-Committee. Substantial costs were awarded against the Local Authority in favour of the Applicant. It is to be hoped, following this case, that both Licensing Sub-Committees and Magistrates will give much more thought to providing full and clear reasons having regard to the nature of the issues and the evidence given, as per the case of *R (on the application of Hope & Glory Public House Ltd.) -v- City of Westminster Magistrates Court (2011) EWCA Civ 31*

Tweet <1



Roger Harrison <[redacted]>

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RE: The Alma Inn15.5.

Mills John <john.mills@south-derbys.gov.uk>

Wed, Jun 5, 2013 at 12:59 PM

To: Roger Harrison <[redacted]>

Cc: Hewlett Jim <Jim.Hewlett@south-derbys.gov.uk>, Holford Matthew <Matthew.Holford@south-derbys.gov.uk>, Broome Stewart <Stewart.Broome@south-derbys.gov.uk>, Ledger Bob <Bob.Ledger@south-derbys.gov.uk>

Mr Harrison,

I can confirm that the level agreed is 45dBA as a 5 minute LAeq (an average over the five minute period) 1m from the facade of the terraced properties opposite.

If you have any further queries please do not hesitate to contact me.

Kind regards,

John Mills
Environmental Health Officer
Environmental Health Department
South Derbyshire District Council
Tel: 01283 595903
Fax: 01283 595855
www.south-derbys.gov.uk

From: Ledger Bob

Sent: 05 June 2013 12:51

To: 'Roger Harrison'

Cc: Hewlett Jim; Mills John; Holford Matthew; Broome Stewart

Subject: RE: The Alma Inn15.5.

[Quoted text hidden]

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