

BIRMINGHAM CITY COUNCIL
LICENSING SUB-COMMITTEE A

Thursday 20 July 2023 at 1000
hours in On-Line Meeting,
Microsoft Teams

A G E N D A

1 NOTICE OF RECORDING/WEBCAST

The Chair to advise/meeting to note that this meeting will be webcast for live or subsequent broadcast via the Council's Public-I microsite, please click this link, <https://birmingham.public-i.tv/core/portal/home> and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2 DECLARATIONS OF INTERESTS

Members are reminded they must declare all relevant pecuniary and other registerable interests arising from any business to be discussed at this meeting.

If a disclosable pecuniary interest is declared a Member must not participate in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If other registerable interests are declared a Member may speak on the matter only if members of the public are allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If it is a 'sensitive interest', Members do not have to disclose the nature of the interest, just that they have an interest.

Information on the Local Government Association's Model Councillor Code of Conduct is set out via <http://bit.ly/3WtGQnN>. This includes, at Appendix 1, an interests flowchart which provides a simple guide to declaring interests at meetings.

3 APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

Attached

4 RE: THE ARK BIRMINGHAM, 74 JOHN BRIGHT STREET, BIRMINGHAM, B1 1BN - LICENSING ACT 2003 AS AMENDED BY THE VIOLENT CRIME REDUCTION ACT 2006 - APPLICATION FOR EXPEDITED REVIEW OF PREMISES LICENCE: CONSIDERATION OF INTERIM STEPS

N.B. Application scheduled to be heard at 1000 hours.

Documents submitted:

- A. Certificate issued by West Midlands Police under Section 53A of the Licensing Act 2003

- B. Application for Review of Licence
- C. Copy of Premises Licence
- D. Location maps

West Midlands Police have applied for an expedited review of the premises licence in respect of **The Ark Birmingham, 74 John Bright Street, Birmingham, B1 1BN.**

The application has been made under Section 53A of the Licensing Act 2003 (as amended) and has been accompanied by a certificate signed by a senior member of the force, stating that in their opinion the licensed premises have been associated with serious crime and disorder. (See A and B above)

In accordance with the regulations, the licensing authority has given the premises licence holder and responsible authorities a copy of the application for review and a copy of the certificate.

This hearing has been arranged in order to consider whether it is necessary to take any interim steps in respect of the licence pending the determination of the review. The Premises Licence is included at item C.

The interim steps that must be considered at the hearing are:

- Modification of the conditions of the premises licence;
- Exclusion of the sale of alcohol by retail from the scope of the licence;
- Removal of the designated premises supervisor from the licence;
- Suspension of the licence

5 OTHER URGENT BUSINESS

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chairman are matters of urgency.

West Midlands Police

CERTIFICATE UNDER SECTION 53A (1)(B) **OF THE LICENSING ACT 2003**

I Superintendent James Munro hereby certify that in my opinion the premises described below are associated with both serious crime and serious disorder.

Premises: The Ark Birmingham.

Address: 74, John Bright Street, Birmingham, B1 1BN

Premise Licence Number: 5359

Premise Licence Holder: Ark Indian Dining and Bar Ltd

Designated Premise Supervisor: Mr Deepak Singh

I am a Superintendent in West Midlands Police.

I am giving this certificate because I am of the opinion that the summary review procedure is necessary to ensure the licensing objectives are promoted expeditiously. Given the seriousness of the trigger incident on 15th July 2023, which involved a disorder involving numerous people outside the premises and members of door staff arming themselves with items they use as weapons, the inadequacy of measures followed by the operators on the night of the incident which include providing completely inadequate care for an injured person who was unconscious, in my opinion, immediate steps are required that can best be achieved through the summary review procedures. Other steps available under the Licensing Act 2003, including a standard review application, cannot lead to the imposition of immediately effective steps to promote the licensing objectives and so these are inadequate. I view this application as a proportionate and necessary response to the serious incident at the venue.

In coming to my opinion, I have had regard to the facts of the incident and current investigation, the terms of section 53A of the Licensing Act 2003 and Chapter 12 ("Summary Reviews") of the Guidance issued under section 182 of the Licensing Act 2003 (December 2022 revision).

Signed:



Dated: 18th July 2023



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 the 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

I - Superintendent James Munro,

(on behalf of) the chief officer of Police for the West Midlands Police area apply for the review of a premises licence under section 53A of the Licensing Act 2003

1. Premises details: The Ark Birmingham .

Postal address of premises,(or if none or not known, ordinance survey map reference or description):

74, John Bright Street, City Centre.

Post Town: **Birmingham**

Post Code (if known): **B1 1BN.**

2. Premises Licence details:

Name of premise licence holder (if known):

Ark Indian Dining and Bar Ltd.

Number of premise licence (if known):

5359.

3. Certificate under section 53A (1)(B) of the Licensing Act 2003 (Please read guidance note 1)

I confirm that this is a certificate has been given by a senior member of the police force for the police area above that in his/her opinion the above premises are associated with serious crime or serious disorder or both, and the certificate accompanies this application.

(Please tick the box to confirm)



4. Details of association of the above premises with serious crime, serious disorder or both:
(Please read guidance note 2)

The Ark Birmingham is a licensed premises situated at 74, John Bright Street, Birmingham. B1 1BN. The premises license holder is Ark Indian Dining and Bar Ltd and the designated premises supervisor is Mr Deepak Singh.

The premises is licensed to sell alcohol for consumption on and off the premises between the hours of 1000 and 0100 between Sunday and Thursday and 1000 and 0300 on Fridays and Saturdays.

At 0230 hours Saturday 15th July 2023 the premises were open and conducting licensable activity.

At this time a number of persons have left the premises. These people have become involved in disorder and during this two persons have been forced to the ground where they have been attacked and suffered injuries consistent with woundings. Door staff have also joined in the disorder attacking people with queue cordon metal stantions and queue cordon ropes. Door staff have also come across a person who was unconscious in the road as a result of the incident who they have picked up and then thrown onto the pavement and left without any attempt to discover the persons condition or to provide care or first aid. Four persons have been arrested for being part of this disorder.

This matter is subject of two crime reports for wounding against section 18 The Offences Against The Persons Act 1861 which are serious crimes by virtue of the maximum sentence on conviction being life imprisonment. This is an ongoing enquiry which may lead to more reports of injuries and arrests.

West Midlands Police have serious concerns for the promotion of the licensing objectives at this premises.

West Midlands Police have no confidence in the management of the premises as door staff can be clearly seen arming themselves with items to use as weapons to attack persons with and patrons of the premises are involved in serious disorder outside the premises.

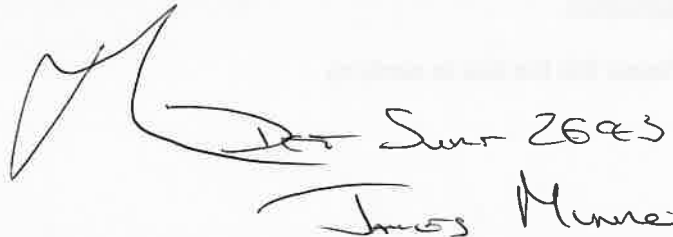
The lack of confidence in the management is compounded by the provision of completely inadequate care for a person that was injured and unconscious.

This is such a serious incident and breach of the licensing objectives that West Midlands Police would request that the premises license is suspended and the Designated Premises Supervisor is removed.

Signature of applicant:

Date: 18th July 2023.

Rank/Capacity: Superintendent



James Munro

Contact details for matters concerning this application: BW Licensing

Address: Licensing Dept c/o Birmingham West and Central Police Station, Birmingham

Telephone Number(s): 0121 626 6099

E-mail - bw_licensing@west-midlands.police.uk

Notes for guidance:

1. A certificate of the kind mentioned in the form must accompany the application in order for it to be valid under the terms of the Licensing Act 2003. The certificate must explicitly state the senior officer's opinion that the premises in question are associated with serious crime, serious disorder or both.

Serious crime is defined by reference to section 81 of the Regulation of Investigatory Powers Act 2000. In summary, it means:

- conduct that amounts to one or more criminal offences for which a person who has attained the age of eighteen and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more:or
- conduct that amounts to one or more criminal offences and involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.

Serious Disorder is not defined in legislation, and so bears its ordinary English meaning.

2. Briefly describe the circumstances giving rise to the opinion that the above premises are associated with serious crime, serious disorder or both.

LICENSING ACT 2003PREMISES LICENCE

Premises Licence Number:

5359 / 1

Part 1 - Premises details:

Postal address of premises, or if none, ordnance survey map reference or description	
The Ark Birmingham 74 John Bright Street	
Post town:	Post Code:
Birmingham	B1 1BN
Telephone Number:	

Where the licence is time limited the dates

N/A

Licensable activities authorised by the licence

B	Films
E	Live Music
F	Recorded Music
H	Anything of a similar description to that falling within (e), (f), or (g)
L	Late night refreshment
M3	Sale of alcohol by retail (both on & off the premises)

The times the licence authorises the carrying out of licensable activities

Sunday - Thursday	10:00	-	01:00	B ,E ,F ,H ,M3
	23:00	-	01:00	L
Friday - Saturday	10:00	-	03:00	B ,E ,F ,H ,M3
	23:00	-	03:00	L

The opening hours of the premises

Sunday - Thursday	10:00	-	01:30
Friday - Saturday	10:00	-	03:30

Where the licence authorises supplies of alcohol whether these are on and/or off supplies

On and Off Supplies

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Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence Ark Indian Dining & Bar Limited 74 - 86 John Bright Street	
Post town: Birmingham	Post Code: B1 1BN
Telephone Number:	
Email	

Registered number of holder for example company number or charity number (where applicable) 12808215
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Name, address, telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol Mr Deepak Singh	
Post town:	Post Code:
Telephone Number:	

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol	
Licence Number 20/000244/LAPER	Issuing Authority SANDWELL METROPOLITAN BOROUGH COUNCIL

Dated 23/06/2021

Bhapinder Nandhra
Senior Licensing Officer
For Director of Regulation and Enforcement

Annex 1 – Mandatory Conditions

No supply of alcohol may be made under the premises licence (a) at a time when there is no designated premises supervisor in respect of the premises licence, or (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

Every retail sale or supply of alcohol made under this licence must be made or authorised by a person who holds a personal licence.

The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises. In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises— (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to— (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or (ii) drink as much alcohol as possible (whether within a time limit or otherwise); (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective; (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective; (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner; (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).

The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol. The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy. The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either— (a) a holographic mark, or (b) an ultraviolet feature.

The responsible person must ensure that— (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures— (i) beer or cider: ½ pint; (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and (iii) still wine in a glass: 125 ml; (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.”

(1) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price. (2) In this condition:— (a) “permitted price” is the price found by applying the formula $P = D + (D \times V)$, where— (i) P is the permitted price, (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol; (b) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979; (c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence— (i) the holder of the premises licence, (ii) the designated premises supervisor (if any) in respect of such a licence, or (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence; (d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and (e) “value added tax” means value added tax charged in accordance with the Value Added Tax Act 1994. (3) Where

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the permitted price would not be a whole number of pennies, the permitted price shall be taken to be the price rounded up to the nearest penny. (4) Where the permitted price on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax, the permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

The admission of children under the age of 18 to film exhibitions permitted under the terms of this licence shall be restricted in accordance with any recommendation made: (a) By the British Board of Film Classification (BBFC), where the film has been classified by that Board, or (b) By the Licensing Authority where no classification certificate has been granted by the BBFC, or, where the licensing authority has notified the licence holder that section 20(3)(b) (s74(3)(b) for clubs) of the Licensing Act 2003 applies to the film.

Each individual assigned to carrying out a security activity must be licensed by the Security Industry Agency.

Annex 2 – Conditions consistent with operating schedule

2a) General conditions consistent with the operating schedule

The Premises Licence holder shall ensure all staff receive adequate training on a regular basis, relating to the four licensing objectives, general licensing regulations/Conditions including Fire regulations. A record of the training will be kept by the management.

Regulated Entertainment shall take place indoors only.

2b) Conditions consistent with, and to promote the prevention of crime and disorder

The Premises Licence holder shall ensure CCTV system to be installed fit for the purpose and satisfaction of West Midlands Police and images shall be retained for at least 31 Days and shall be made available upon request to officers of the Responsible Authorities.

The Premises Licence holder shall ensure staff will be given ongoing training including identification of anti-social or unusual behaviour.

The Premises Licence holder shall ensure an incident register will be kept on the premises and made available at all times to West Midlands Police.

SIA Registered (Qualified) door supervisors shall be employed to control persons queuing to enter and exit the venue, from 11pm onwards whilst regulated entertainment at any time involving a DJ is taking place.

2c) Conditions consistent with, and to promote, public safety

The Premises Licence holder shall ensure adequate lighting will be provided in all public areas and outside the premises.

2d) Conditions consistent with, and to promote the prevention of public nuisance

The disposal of empties and bottles will not be done after 23:00hrs or before 07:00hrs.

The Premises Licence holder shall ensure notices will be posted asking patrons to leave quietly.

The premises licence holder shall ensure that a written agreement is made with a reputable taxi company/ companies requiring that when taxis pick up and drop off customers from the licensed premise's, that noise from these vehicles does not cause a nuisance to local residents.

Customers who require a taxi from the site shall be advised by staff to use taxi companies specified by the licensee.

The balcony area on the first floor shall only be used by a maximum of 5 persons at any one time after 11pm for smoking.

There shall be no meals served on this balcony area after 11pm.

All doors shall remain closed on the first floor leading to the balcony whilst regulated entertainment takes place.

2e) Conditions consistent with, and to promote the protection of children from harm

No enforceable conditions identified from operating schedule.

Annex 3 – Conditions attached after hearing by licensing authority

3a) General committee conditions

On 14 June 2021, Licensing Sub Committee A resolved to GRANT the licence subject to the conditions below:

3b) Committee conditions to promote the prevention of crime and disorder

The Premises Licence holder shall ensure all Security Staff (when on duty working at the premises) will be SIA Registered and will be required to sign a register with details of their name and badge number at the start and end of their shifts. The register will be kept at the premises at all times and will be produced upon request to any authorised officer

3c) Committee conditions to promote public safety

N/A

3d) Committee conditions to promote the prevention of public nuisance

The premises shall have an approved documented dispersal policy (approval needed in writing from West Midlands Police Licensing Department and Birmingham City Council Environmental Health department), which shall be implemented for dispersal on any day/night when Regulated Entertainment has taken place.

To avoid nuisance being caused to neighbours the premises licence holder, or other nominated person/staff, shall monitor the external areas of the Premises after 23:00 hours. If necessary, they shall remind customers to be respectful of neighbours and shall limit the number of customers going outside to use the smoking area to no more than 5 persons at any time and take appropriate steps to avoid customers who use the frontage of the premises causing a nuisance.

All external doors and windows shall be kept closed after 20.00 whenever there is regulated entertainment except as necessary for safe and effective access and egress.

No drinks shall be removed from the premises other than in sealed containers.

All noise associated with live music or amplified music, speech or sound outside the licensed hours for regulated entertainment shall be background and shall be inaudible outside the building.

No waste or recyclable material, including bottles, shall be moved, removed or placed in areas outside the premises building between the hours of 22.00 and 08.00.

There shall be no speakers used for amplified music, speech or sound outside the building.

The Premises Licence Holder shall ensure notices are displayed at all entrances and exits of the premises advising customers to have respect for the nearby residents and keep noise levels to a minimum as they depart.

There shall be no first entry or admission to the premises after 00.00 (midnight).

There shall be no regulated entertainment on the first floor between 23.00 and 10.00 the following day.

The first floor balcony shall not be used for any purpose between 23.00 and 10.00 the following day.

The second floor sound system shall incorporate a distributed speaker system facing inwards to the entertainment area.

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The premises licence holder shall supply a written noise risk assessment and noise management plan to Birmingham City Council Environmental Health Department for approval prior to any regulated entertainment taking place which addresses the specific noise impacts and controls relevant for the premises. The noise management plan shall outline the measures to be adopted to reduce the noise impact of activities associated with the premises including music, deliveries, recycling and refuse collections, smoking areas, dispersal and customers. All operational controls and management actions required by the approved noise management plan shall be instigated at all times.

An assessment of the building design and structure and a proposed scheme of noise insulation and attenuation for the licensed area on the second floor shall be produced by a suitably qualified and experienced acoustic specialist. This scheme shall be submitted in writing to the Environmental Protection Unit of Birmingham City Council and no licensable activity shall take place until the mitigation measures that have been approved in writing by the Environmental Protection Unit of Birmingham City Council have been implemented. The noise mitigation measures shall be thereafter maintained.

A Noise limiting Device (NLD's) shall be installed to the sound system on the second floor entertainment area and this shall be of a type approved by the Birmingham City Council Environmental Health Department and shall be fitted to the amplification system and set at a level approved by the Birmingham City Council Environmental Health Department, to ensure the volume of music is pre-set so as not to cause a noise nuisance to the occupiers of nearby buildings. The installation of the NLD shall be notified to the Environmental Protection Unit at least 14 days before its' initial operation and shall fulfil the following criteria:

- a) The device shall be fitted in an approved position by a competent person and once fitted shall not be moved from the approved position unless prior approval is given.
- b) The device shall be capable of cutting off the mains power to the amplification system if the volume exceeds the pre-set level determined by the Environmental Protection Unit or shall be capable of maintaining the volume of the music at the pre-set level determined by the Environmental Protection Unit and shall not restore power to the sound system until the NLD is reset by the licensee or their nominated person.
- c) The amplification system shall only be operated through the sockets/power points linked to and controlled by the NLD at all times.
- d) The NLD shall be maintained in full working order and at the approved pre-set volume whilst the amplification system is operational.
- e) Any damage or malfunction to the NLD shall be reported to the Environmental Protection Unit as soon as possible and within 24 working hours of the damage occurring or malfunction being noted. The NLD shall not be used in this damaged or malfunctioning state until approval has been given by the Environmental Protection Unit.

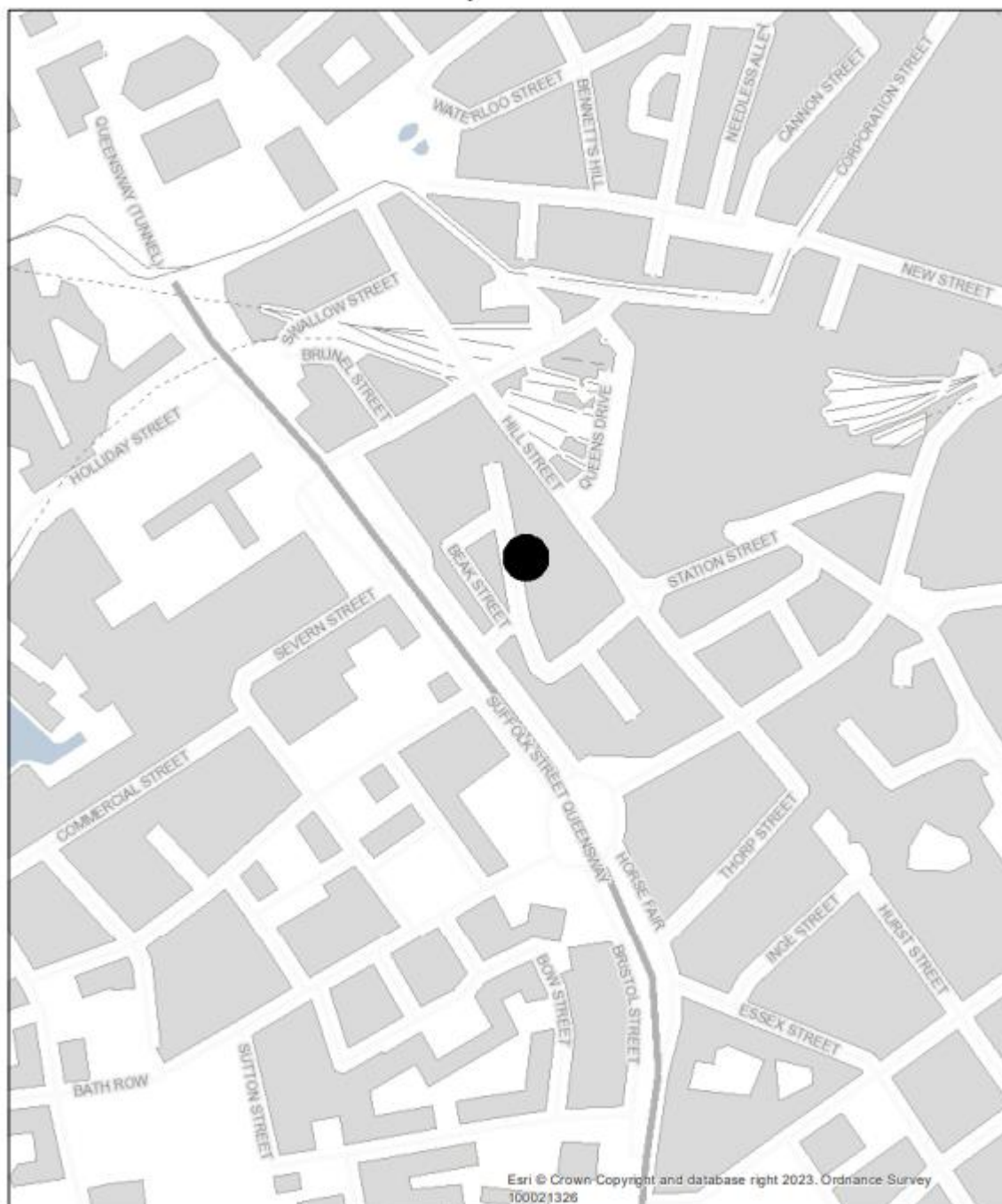
3e) Committee conditions to promote the protection of children from harm

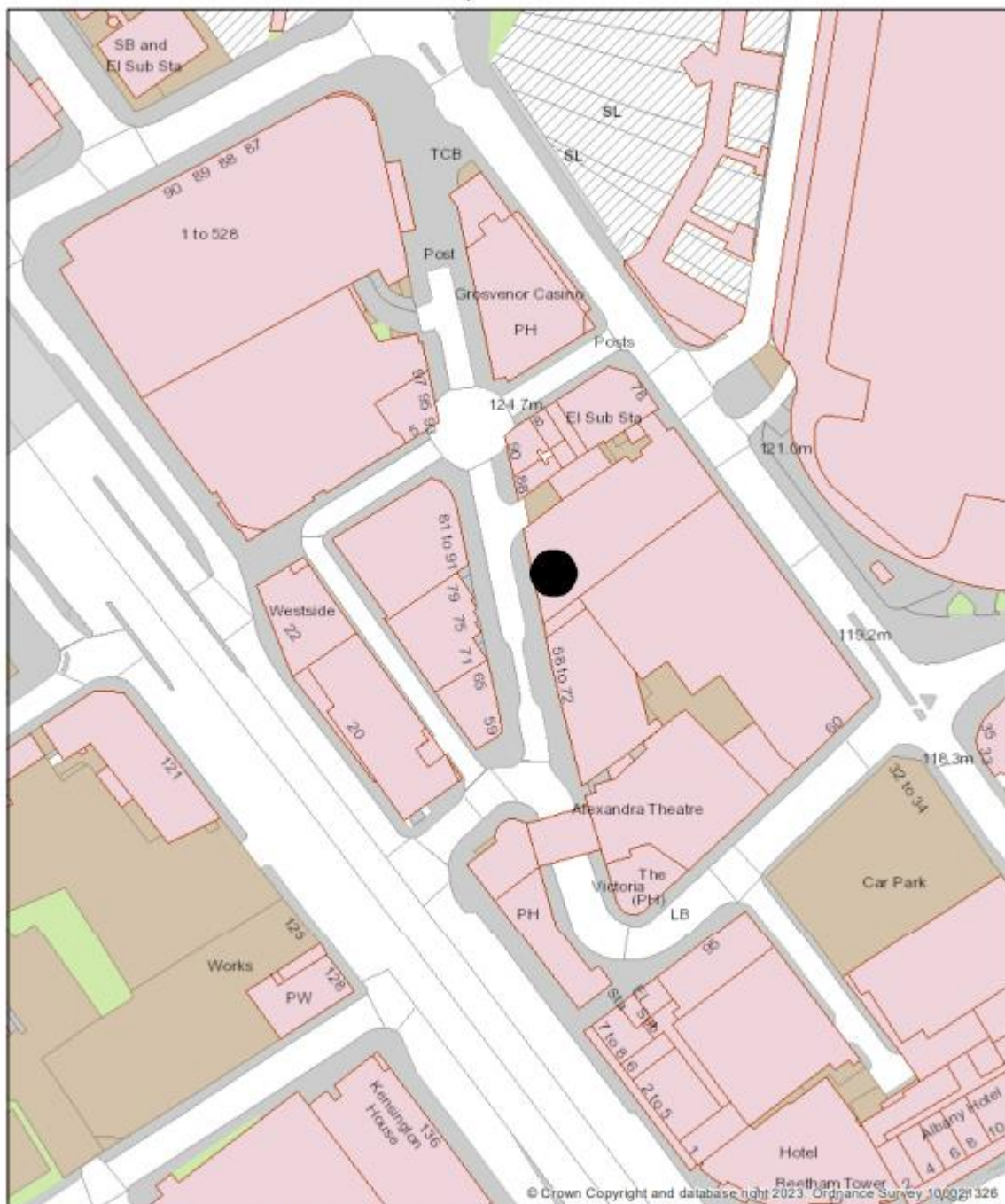
The premises will adopt the 'Challenge 25' or similar policy as proof of age scheme to be in operation during licensed hours. Any refused sales of alcohol shall be recorded either electronically or in suitable book which will state the date, product, time, the name of the person or description, any observations and the name of the member of staff refusing the sale. The record of refused sales will be kept at the premises at all times and produced upon request to any authorised officer.

Annex 4 – Plans

The plan of the premises with reference number **120112-5359/1** which is retained with the public register kept by Birmingham City Council and available free of charge for inspection by appointment only. Please call the Licensing Section on 0121 303 9896 to book an appointment.

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