

# BIRMINGHAM CITY COUNCIL

## PUBLIC REPORT

<b>Report to:</b>	<b>Licensing Sub Committee C</b>
<b>Report of:</b>	<b>Assistant Director of Regulation &amp; Enforcement</b>
<b>Date of Meeting:</b>	<b>Wednesday 29<sup>th</sup> May 2019</b>
<b>Subject:</b>	<b>Licensing Act 2003 Premises Licence – Review</b>
<b>Premises:</b>	<b>Club 101, 70 Hurst Street, Arcadian Centre, Birmingham, B5 4TD</b>
<b>Ward affected:</b>	<b>Bordesley and Highgate</b>
<b>Contact Officer:</b>	<b>Bhapinder Nandhra, Senior Licensing Officer, 0121 303 9896, <a href="mailto:licensing@birmingham.gov.uk">licensing@birmingham.gov.uk</a></b>

### **1. Purpose of report:**

To consider an application to review a Premises Licence.

### **2. Recommendation:**

To consider and determine the review application.

### **3. Brief Summary of Report:**

Review application received on 9<sup>th</sup> April 2019 from West Midlands Police in respect of Club 101, 70 Hurst Street, Arcadian Centre, Birmingham, B5 4TD.

A representation has been received from other persons.

### **4. Compliance Issues:**

#### **4.1 Consistency with relevant Council Policies, Plans or Strategies:**

The report complies with the City Council's Statement of Licensing Policy and the Council's Corporate Plan to improve the standard of all licensed persons, premises and vehicles in the City.

## **5. Relevant background/chronology of key events:**

The Chief Constable of West Midlands Police applied on 9<sup>th</sup> April 2019 for a review of the Premises Licence under Section 51 of the Licensing Act 2003 for Club 101, 70 Hurst Street, Arcadian Centre, Birmingham, B5 4TD.

A representation has been received from other persons, which is attached at Appendix 1.

Review application is attached, see Appendix 2.

The Premises Licence is attached at Appendix 3.

Site location plans are attached at Appendix 4.

When carrying out its licensing functions, a licensing authority must have regard to Birmingham City Council's Statement of Licensing Policy and the Guidance issued by the Secretary of State under s182 of the Licensing Act 2003.

The Licensing Authority is also required to take such steps as it considers appropriate for the promotion of the licensing objectives, which are: -

- a. The prevention of crime and disorder;
- b. Public safety;
- c. The prevention of public nuisance; and
- d. The protection of children from harm.

## **6. List of background documents:**

Copy of the representation as detailed in Appendix 1

Review Application Form, Appendix 2

Copy of Premises Licence, Appendix 3

Site location plans, Appendix 4

## **7. Options available**

Modify the conditions of Licence

Exclude a Licensable activity from the scope of the Licence

Remove the Designated Premises Supervisor

Suspend the Licence for a period not exceeding 3 months

Revoke the Licence

No Action

Where the authority takes a step to modify conditions or exclude a licensable activity, it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

Entered  
a

**From:** Piers Warne  
**Sent:** 18 April 2019 08:15  
**To:** Licensing  
**Cc:** David Kennedy; Matthew Phipps  
**Subject:** Club 101, 70 Hurst Street, Arcadian Centre B5 4TD: Representation in relation to review application

**Importance:** High

Dear Sirs,

**Re: Club 101, 70 Hurst Street, Arcadian Centre B5 4TD**

We act for L & C COMMERCIAL LIMITED who are the freehold owners of the above premises. Our clients makes the following representation to the review application relating to the above premises. Our client makes these submissions as a company that has interests, as landlords, in a number of licensed premises in the area and throughout the country, including Club 101.

We understand that review proceedings have been brought by WMP following allegations that breaches of the licensing objectives were witnessed during a compliance visit on 24 March 2019. In particular the allegations would, if proven, go to the prevention of crime and disorder and public safety licensing objectives.

As landlords of this premises, our client is in the process of reviewing the information received and will take into account any further information provided by WMP and the premises licence holders in relation to the operation of this premises. At that stage they will be in a position to make such further submissions in this matter as may assist the licensing sub-committee in determining this review.

As the Licensing Committee will be aware, the promotion of a safe, vibrant and diverse nightlife in Birmingham is key to ensuring that Birmingham's night time economy thrives. Our client supports that aim. As such, this representation is made in relation to all four of the licensing objectives.

Please confirm receipt of this representation and confirm that all papers relating to the review will be forwarded in due course.

Yours sincerely

Piers Warne  
Associate  
for TLT LLP

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Birmingham City Council, PO Box 17013, Birmingham, B6 9ES

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

**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 The Chief Constable of West Midlands Police**

(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 Club 101 70 Hurst Street Arcadian Centre	
Post town Birmingham	Post code (if known) B5 4TD

BCC Licensing Enforcement LICENSING SECTION DATE RECEIVED 09 APR 2019	
REF NO	
INITIALS	

Name of premises licence holder or club holding club premises certificate (if known) JHAG Entertainment Limited
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Number of premises licence or club premises certificate (if known) 2796
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**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)

☐

**(A) DETAILS OF INDIVIDUAL APPLICANT** (fill in as applicable)

Please tick ✓ yes

Mr ☐ Mrs ☐ Miss ☐ Ms ☐ Other title  
(for example, Rev)

Surname

First names

I am 18 years old or over

Please tick ✓ yes  
☐

Current postal  
address if  
different from  
premises  
address

Post town

Post Code

Daytime contact telephone number

E-mail address  
(optional)

**(B) DETAILS OF OTHER APPLICANT**

Name and address

Telephone number (if any)

E-mail address (optional)

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

The premises are a nightclub that operates within a special policy area in Southside, Birmingham city centre.

It currently has a licence for a number of licensable activities including the sale of alcohol that cease at 06:00 during the week and 24 hours over the weekend.

The premises have recently appointed a new DPS.

During a licensing compliance visit on the early hours of Sunday 24<sup>th</sup> March 2019, a licensing officer witnessed a customer using balloons to inhale nitrous oxide. This nitrous oxide had been acquired within the venue and was being openly used by the customer.

The supply of nitrous oxide is covered by Psychoactive Substances Act 2016.

WMP intended to investigate the supply of the balloons to this customer, to see if it was supplied by the premises directly (as has happened in other local venues) or there was someone supplying nitrous within the venue, posing serious concerns over the search procedure.

The investigation swiftly ended as the venue could not supply any CCTV.

On Sunday 31<sup>st</sup> March, a male was taken to hospital following an incident inside 101. The male had head injuries. WMP requested CCTV from the licence holder to investigate this incident and were again told that the CCTV was not working and therefore no evidence was available.

The premises are not operating in a manner which gives WMP confidence that the licensing objectives are being complied with. Offences have taken place inside the premises and they have failed to comply with conditions. The investigations have been frustrated by a lack of CCTV. WMP believe it is necessary and proportionate to bring this licence before a licensing subcommittee.

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

Licensing Department West Midlands Police HQ Lloyd House Birmingham B4 6NQ
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 type="checkbox"/>
<input type="checkbox"/>

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

Further evidence will be supplied in the evidence and disclosure bundle which will include email correspondence with the venue.

**Please tick ✓ yes**



Day    Month    Year

1	2	3	4	5	6	7	8
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**If you have made representations before relating to the premises please state what they were and when you made them**

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, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.**

**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

*ISMA SHAR*

Date

*09/04/19*

Capacity

*DULY AUTHORISED ON BEHALF OF CHIEF CONSTABLE*

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

Licensing Department  
West Midlands Police HQ  
Lloyd House

**Post town**

*Birmingham*

**Post Code**

*B4 6NQ*

**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.

## BIRMINGHAM CITY COUNCIL

LICENSING ACT 2003PREMISES LICENCE

Premises Licence Number:

2796 / 6

**Part 1 - Premises details:**

<b>Postal address of premises, or if none, ordnance survey map reference or description</b>	
Club 101 70 Hurst Street Arcadian Centre	
<b>Post town:</b>	<b>Post Code:</b>
Birmingham	B5 4TD
<b>Telephone Number:</b>	

<b>Where the licence is time limited the dates</b>
N/A

<b>Licensable activities authorised by the licence</b>	
A	Plays
B	Films
C	Indoor sporting events
E	Live music
F	Recorded music
G	Performances of dance
H	Anything of similar description to that falling within (live music), (recorded music) or (performances of dance)
L	Late night refreshment
M3	Sale of alcohol by retail (both on & off the premises)

<b>The times the licence authorises the carrying out of licensable activities</b>			
Monday - Thursday	10:00	-	06:00 A ,B ,C ,E ,F ,G ,H ,M3
	23:00	-	L
Friday - Sunday	10:00	-	09:59 A ,B ,C ,E ,F ,G ,H ,M3
	23:00	-	L

<b>The opening hours of the premises</b>			
Monday - Thursday	10:00	-	06:30
Friday - Sunday	10:00	-	09:59

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<p><b>Where the licence authorises supplies of alcohol whether these are on and/or off supplies</b></p> <p>On and Off Supplies</p>
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**Part 2**

<b>Name, (registered) address, telephone number and email (where relevant) of holder of premises licence</b> Jhag Entertainment Limited 16 Beaufort Court Admirals Way Docklands	
<b>Post town:</b> London	<b>Post Code:</b> E14 9XL
<b>Telephone Number:</b> Not specified	
<b>Email</b> N/A	

<b>Registered number of holder for example company number or charity number (where applicable)</b> 8969545
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<b>Name, address, telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol</b> Dennel Walker	
<b>Post town:</b>	<b>Post Code:</b>
<b>Telephone Number:</b> N/A	

<b>Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol</b>	
<b>Licence Number</b> 9545	<b>Issuing Authority</b> BIRMINGHAM CITY COUNCIL

Dated 28/09/2018

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SHAID YASSER  
Senior Licensing Officer  
For Director of Regulation and Enforcement

## BIRMINGHAM CITY COUNCIL

### 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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## BIRMINGHAM CITY COUNCIL

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.

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### **Annex 2 – Conditions consistent with operating schedule**

#### **2a) General conditions consistent with the operating schedule**

If the premises are to be used for any act, service, or other entertainment which is adult entertainment, the premises must notify in writing, both the Licensing Department at West Midlands Police and Birmingham Children's Trust, at least 28 days in advance, and both West Midlands Police and Safeguarding Children Board have the power to veto any such adult activity.

The premises will have a standard time for the cessation of licensable activities of 5am; if the premises wishes to operate past 5am for any licensable activity then the Designated Premises Supervisor must inform West Midlands Police Licensing Department in writing which dates they wish to use, for what purpose, and to what hour, at least 28 days in advance for a risk event (defined as an event that attracts a selected audience type attracted by the activity within the premises), 14 days in advance for a sporting event, and 7 days in advance for a non-risk event. West Midlands Police retain the power to veto any such increase in the standard operating hour if any of the four licensing objectives are/have been or are likely to be breached; such veto to be notified in writing to the Designated Premises Supervisor.

The Licence Holder will provide a training programme to ensure that all staff are briefed on the four licensing objectives, in particular to prevent underage drinking, drunkenness, the use of drugs and violent or anti-social behaviour and the need to protect children from harm.

C.C.T.V. system is to be installed at the premises to the specification agreed with West Midlands Police Licensing Department. C.C.T.V. is to be operational whilst the premise is open and be recording continually. Recordings are to be kept for minimum of 31 days.

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

If the premises uses any new promoter for any event, then for the first event the Designated Premises Supervisor for the premises will notify West Midlands Police Licensing Department at least 28 days before the first event, with a risk assessments for the event. The premises will not hold any new events without the agreement of West Midlands Police Licensing Department. Recommendations made to the Designated Premises Supervisor that satisfy the four licensing objectives will become conditions for that event.

Under normal operating conditions the premises will use 1-100+1 door supervisors per number of patrons inside the premises. This ratio may alter if the premises has risk events. Security numbers for these events will be part of the risk assessment, after consultation with West Midlands Police Licensing Department.

The premises are to maintain door staff profiles for all door staff working at the premises, and for any door staff that have worked on the premises in the last three months. The door staff profile will consist of identification for the member of staff which shall be a copy of picture ID with a current home address.

Door supervisors stationed outside the front of the premises will wear hi-visibility jackets/coats, and will have their SIA badge held in a clear arm sleeve. Door supervisors inside the premises will wear hi-visibility arm bands, again with their SIA badge held in a clear arm sleeve.

Staff are to be given ongoing training, including identification of anti-social or unusual behaviour.

Internal and external lighting is to be checked regularly.

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

A member of staff is to be trained in First Aid.

A Health and Safety risk assessment is to be carried out regularly.

A Fire risk assessment is to be carried out weekly

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## **BIRMINGHAM CITY COUNCIL**

The premises are to adopt best practices, such as the National Alcohol Harm Reduction Strategy.

Electrics, gas, fire and relevant equipment are to be checked and maintained in working order and tested annually.

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

Deliveries are to be monitored so as not to constitute a Public Nuisance.

A zero-tolerance policy toward drunken or anti-social behaviour is to be in operation on the premises at all times.

Management and staff are to voluntarily follow best practice, such as the control of noise emanating from the premises.

All staff are to be trained to ensure the quiet departure of patrons.

Ventilation is to be maintained to prevent odour and noise from constituting a Public Nuisance.

Recorded music sound levels are to be monitored so as not to constitute a public nuisance.

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

Persons under the age of 16 may be admitted only if accompanied by an adult.

No persons under the age of 16 permitted at the bar serveries.

Persons under the age of 18 years, if accompanied by an adult and using the premises for the purpose of a meal, can be on the premises Sunday to Thursday to 22:00 and Fridays and Saturdays to 20:30. No person under the age of 18 years shall be on the premises at any time when the premises are being used for adult entertainment and, for the avoidance of doubt, that includes performers.

The "Challenge 21" policy is to be implemented and the premises are to name the forms of identification they will accept. Only appropriate photo identification such as a passport or a driving licence are acceptable. "Challenge 21" literature and posters are to be displayed around the premises, especially at the front doors and by the bars.

## **BIRMINGHAM CITY COUNCIL**

### **Annex 3 – Conditions attached after hearing by licensing authority**

#### **3a) General committee conditions**

On 23rd January 2017 Licensing Sub Committee A, having reviewed this licence following receipt of a review application by Councillor Gareth Moore relating to flyposting, resolved to modify the conditions of licence as detailed under the objective below.

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

N/A

#### **3c) Committee conditions to promote public safety**

N/A

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

Additional Permanent Conditions:

1. The Premises Licence Holder shall, as far as is reasonably practicable, ensure that events held at the premises are not in any way promoted by the use of illegal fly-posting or unauthorised advertisements attached to street furniture.
2. The Premises Licence Holder shall ensure that agreements/contracts with promoters for the use of their premises or for events to be held at their premises prohibit the use of illegal fly-posting and/or advertisements attached to street furniture, and shall take all steps reasonable to enforce such agreement/contract terms. The Premises License Holder shall maintain a register of individuals and companies contracted with, for inspection by any Responsible Authority on request.
3. The Premises Licence Holder shall take all reasonable precautions and exercise all due diligence to ensure that no person/company promoting or providing entertainment on the premises, nor any person acting on behalf of any promoters, shall display in an unlawful manner advertisements promoting the entertainment or the premises, in particular:
  - a) no display of advertisements should take place on street furniture;
  - b) no display of advertisements should take place on premises or structures placed on, over, in or adjacent to the highway, unless the licensee has first obtained the written consent of the owner of the premises or structure. Such consent shall be shown to a responsible authority on request.
4. The Premises Licence Holder shall remove any unlawful advertisements of events at their premises where they become aware of them or they are advised by Birmingham City Council, its agent(s) or West Midlands Police of an illegal advertisement being displayed. Such removal shall take place within 48 hrs of receiving the said notice. If this is unachievable the Premises Licence Holder should contact the Head of Environmental Health to discuss actions being taken and to agree a revised reasonable timeframe.

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

N/A

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**Annex 4 – Plans**

The plan of the premises with reference number **107698-2796/6** 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.



**Birmingham City Council**

Map Created By:

Notes

Date of Map Creation: 10/04/2019

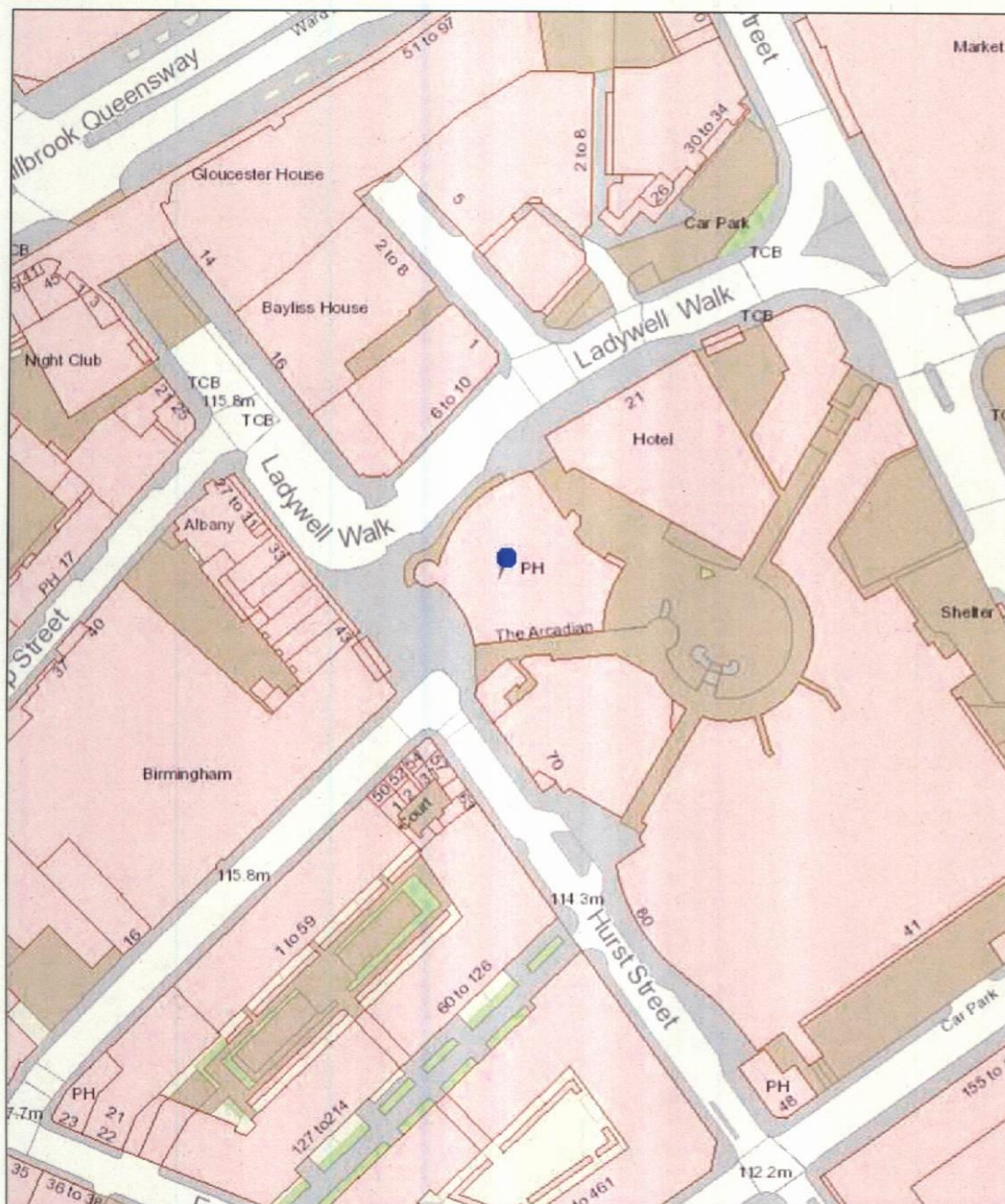


Scale:  
1:4,000

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**Birmingham City Council** Map Created By:

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