

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	Licensing Sub Committee A
Report of:	Interim Assistant Director of Regulation & Enforcement
Date of Meeting:	Monday 8th February 2021
Subject:	Licensing Act 2003 Premises Licence – Review
Premises:	KVK Supermarket, 243-245 Eachelhurst Road, Walmley, Birmingham, B76 1DT
Ward affected:	Sutton Walmley and Minworth
Contact Officer:	Bhapinder Nandhra, Senior Licensing Officer, licensing@birmingham.gov.uk

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 18th December 2020 from the Chief Inspector of Weights & Measures in respect of KVK Supermarket, 243-245 Eachelhurst Road, Walmley, Birmingham, B76 1DT.

Representations have been received from West Midlands Police and the Home Office, as responsible authorities.

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 Inspector of Weights & Measures applied on 18th December 2020 for a review of the Premises Licence under Section 51 of the Licensing Act 2003 for KVK Supermarket, 243-245 Eachelhurst Road, Walmley, Birmingham, B76 1DT.

Representations have been received from West Midlands Police and the Home Office, as responsible authorities, which are attached at Appendices 1 and 2.

Review application is attached. See Appendix 3.

The Premises Licence is attached at Appendix 4.

Site location plans are attached at Appendix 5.

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 representations as detailed in Appendices 1 – 2.

Review Application Form, Appendix 3.

Copy of Premises Licence, Appendix 4.

Site location plans, Appendix 5.

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.

From: Christopher Jones
Sent: 21 December 2020 13:29
To: Licensing
Subject: Premises Licence 1513 243-245 Eachelhurst Road, Walmley B76 1DT

Good Afternoon Licensing,

West Midlands Police support the representation made by Birmingham Trading Standards regarding KVK Supermarket Ltd, 243/5 Eachelhurst Road, Walmley, Birmingham. B76 1DT – licence number 1513.

The representation is supported under the public safety and prevention of crime & disorder licensing objectives.

The evidence submitted by Trading Standards quite clearly shows that this premises is supplying counterfeit alcohol, selling it to the public, passing it off as a legitimate product namely Yellow Tail wine.

Trading Standards received an initial complaint on 9th November 2020 from a member of the public complaining that they had purchased 6 bottles of Yellow Tail wine from KVK Supermarket on 5th November 2020. 3 bottles of which were deemed to be suspect by the customer.

On 10th November 2020 Trading Standards visited the premises and seized one bottle of Yellow Tail wine from the premises as it was the same code number which the original complainant was concerned about.

On 11th November 2020 the brand holder of Yellow Tail wine confirmed to Trading Standards that all the bottles with this code number were counterfeit.

Trading Standards then revisited the premises on 12th November 2020 and seized 40 bottles of counterfeit Yellow Tail wine from the premises.
At this visit the premises owner produced an invoice from a local cash & carry for the purchase of the bottles of wine.

This invoice has since been proven to be false after investigation with the wholesalers. Furthermore the wholesalers have carried out a national audit of their stock of Yellow Tail wine and have not found any bottles within their organisation with the same batch codes as the ones seized from KVK Supermarket, which have been confirmed as counterfeit.

It is noted that the brand holders of Yellow Tail wine also received a complaint from a member of the public in October 2020 regarding 3 bottles of wine purchased from these premises which again were confirmed as counterfeit.

More often than not the illegitimate purchase and sale of illicit / counterfeit alcohol is made by cash transactions with no traceability and therefore no UK duty being paid. Such transactions are unlikely to be shown on the company's accounts avoiding the payment of taxes.

Traders acting unscrupulously purchasing illicit / counterfeit alcohol probably 'off the back of a lorry' cannot have any idea where the alcohol has originated from or even if it is fit for human consumption. The only intention is to maximise profit, seemingly without a thought of the consequences and impact on the victims, with making money being the driving factor.

The victim in the sale of counterfeit alcohol is not only the consumer but the brand itself. This underground practise would cause damage to the Yellow Tail Wine Company brand, destroying customer confidence putting their business at greater risk in these uncertain times.

This type offence, the manufacture and distribution of counterfeit alcohol, is normally committed by organised criminal gangs selling it on 'the black market'. The money generated by this type of crime normally goes on to fund further criminal activity which has a further negative impact on the victims and wider community.

West Midlands Police have no confidence in the management of these premises. The fact that Trading Standards have visited on 2 occasions (only 2 days apart) and seized counterfeit alcohol on both occasions proves that the premises have no intention to trade in a manner to promote the licensing objectives. The fake invoice produced by the premises for the wine seized by Trading Standards shows a degree of preplanning and deception in order to cover their actions and illicit activity, which strengthens West Midlands Police stance of having no confidence in the management of the premises.

Regards

Chris Jones 55410

Birmingham Central Licensing Team West Midlands Police

From: ISD Alcohol Licensing

Sent: 22 December 2020 12:47

To: Martin Williams; Licensing; bw licensing; ISD Alcohol Licensing Pollution Team; PlanningandRegenerationEnquiries; LicensingBCT; Birmingham Public Health

Cc:

Subject: RE: New Licence review - KVK Supermarket Ltd. - 243/5 Eachelhurst Road, Walmley, Birmingham B76 1DT - licence No. 1513

Good afternoon,

Thank you for providing your submissions regarding the above premises located in the Birmingham area.

We wish to add to your submission in regards to the premises above.

For your records and further to intel information, a visit was made to the premises back in July 2018 by our enforcement officers. They encountered an illegal worker, checks confirmed he was an overstayer who failed asylum and was arrested.

At the time of the arrest Kuladevi THAVARASA whom we discovered to be the director of the company would have been fully aware and have all knowledge of the staff employed in the company.

Regards

**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 Martin Williams (on behalf of Donna Bensley Chief Inspector of Weights & Measures)

Apply for the review of a premises licence under section 51 of The Licensing Act 2003 for the premises described in part 1 below.

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description	
KVK Supermarket Ltd 243/5 Eachelhurst Road, Walmley	
Post town BIRMINGHAM	Post code (if known) B76 1DT

Name of premises licence holder or club holding club premises certificate (if known) KVK Supermarket Ltd
--

Number of premises licence or club premises certificate (if known) 1513

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)

YES

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

Please tick ✓ yes

I am 18 years old or over

☐

**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)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address; Martin Williams Birmingham Trading Standards 1-3 Ashted Lock Way Aston Birmingham B7 4AZ Our Ref: 9832345
Telephone number (if any)
E-mail address (optional)

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

- | | |
|---|---------------------------------|
| | Please tick one or more boxes ✓ |
| 1) the prevention of crime and disorder | Yes |
| 2) public safety | Yes |
| 3) the prevention of public nuisance | <input type="checkbox"/> |
| 4) the protection of children from harm | Yes |

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

On 9 November 2020 Birmingham Trading Standards Service received a complaint from a member of the public concerning Yellow Tail wine purchased from KVK Supermarket, (known locally as NISA) 243/5 Eachelhurst Road, Walmley, Birmingham B76 1DT.

The consumer said that her husband had purchased six bottles of Yellow Tail 2019 Merlot on 5 November 2020 from the shop for her. On opening she noticed three of the bottles had different colour liquid inside and did not taste the same as the others. She sent images of two of these bottles which had lot code L9318 19:44 E1 printed on the back label to Trading Standards.

Trading Standards Officer Martin Williams went to the shop on 10 November 2020 and found just one bottle of this Yellow Tail 2019 Merlot with lot code L9318 19:44 E1. It was on the shelf along with other varieties of Yellow Tail wine. This bottle was seized for further examination.

On 11 November Trading Standards were advised by the Yellow Tail brand holder, Casella Brands, that bottles with this code were counterfeit. They also provided Officer Williams with a list of other lot codes of Yellow Tail varieties that they also knew to be counterfeit.

A revisit was carried out at the shop with the information provided on 12 November 2020. The officers noticed that there appeared to be a new delivery of Yellow Tail

wine as there was more on the shelf than before and a trolley of other varieties was by the shelf that appeared to be in the process of being stacked on the shelves.

The person in charge, a Mrs Kuladevi THAVARASA, said that she had just bought them from Bookers cash & carry at Warwick and said she had an invoice to prove it.

Officers then examined all the varieties of Yellow Tail wine on the shelf and in the trolley and seized the following ones whose lot codes were listed as counterfeit by Casella;

- 6 bottles of Yellow Tail 2017 Pinot Grigio lot code L8117 07:08 E1
- 7 bottles of Yellow Tail 2016 Cabernet Sauvignon lot code L17190
- 5 bottles of Yellow Tail 2019 Merlot lot code L0111 19:30 E1
- 6 bottles of Yellow Tail 2019 Merlot lot code L0111 19:30 E1 (still in box)
- 3 bottles of Yellow Tail 2016 Merlot lot code L17186.

In addition;

13 bottles of Yellow Tail 2019 Shiraz lot code L0136 00:40 E1 were seized as they appeared to be suspect. These were later confirmed as a new counterfeit variety by Casella.

Officers were given the invoice from Bookers, dated 11 November 2020. This showed the purchase of 12 bottles of Merlot, 18 bottles of Pino Grigio and 18 bottles of Sauvignon Blanc only of Yellow Tail varieties. Officers were unable to reconcile this with the items seized.

On 9 December 2020 officers went to Bookers in Warwick. None of the Yellow Tail varieties in stock had any of the same codes as those seized at the shop or any of the other suspect codes. The Food Standards Agency (FSA) had also asked Bookers to conduct a national audit on all of their branches with the result that no illicit Yellow Tail bottles were found.

Casella advised Officer Williams that they had also dealt with another complaint by a member of the public about counterfeit Yellow Tail 2018 Sauvignon Blanc lot code L8191 03:52 E1 purchased for his wife from the same shop in October 2020.

The man had bought one bottle which his wife said did not taste right. He bought a second which she said the same. When a third bottle still seemed suspect, he sent images to Casella who confirmed that bottles with that lot code were counterfeit; they asked him to buy two more with the same lot code and confirmed that they were also counterfeit.

Casella has been working with the wine inspectorate section of the FSA to trace the source of these products. The counterfeit codes are now published on FSA National Food Crime Unit Alert Bulletin- NFCU/2020/04 (Counterfeit Casella Wines).

The bulletin also states that many of the counterfeit varieties have been sent for analysis and “although the traceability of the suspect wines is unclear, there are currently no specifically identified concerns for health regarding the consumption of these products”

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

In total 40 bottles of various varieties of counterfeit Yellow Tail wine were seized from the shop on 12 November 2020 as well as the one on 10 November 2020.

Other bottles we suspect to be illicit are the three bought by the first complainant whose bottle lot codes matched the first bottle seized on 10th November by Trading Standards. If we take the five bought by the second complainant into account as well That is another 8 we know about. Based on this there is likely to have been a considerable sold over a period of time that we can only guess of.

In joint working with the FSA and Casella it would appear that this is a large-scale operation, (probably originating abroad) using organised crime gangs in the UK to distribute and sell the products.

The follow up with Bookers was done to ensure the items had not come from them as the retailer had said.

When officers went to the shop on 12 November 2020 the person in charge; Mrs Kuladevi THAVARASA, said that it was her business and she had not transferred the licence from the previous owner since taking over in February 2020.

The invoice she gave provided from Bookers was in the name of Mrs THAVARASA of KVK Supermarket Ltd, 243/5 Eachelhurst Road, Walmley Birmingham B76 1DT.

The PLH and DPS was listed as a Mrs Devanayaki VICKNESWARAN.

The licence was modified after our visit on 14 December 2020 where the PLH is now KVK Supermarket Ltd, (sole director being Mrs Kuladevi THAVARASA) with the DPS still being Mrs Devanayaki VICKNESWARAN.

Previous history of this shop.

There is no previous history of similar issues at this shop in recent years.

Recommendations.

Counterfeit Alcohol is worse than non-duty as it is specifically manufactured to look like genuine brands and mislead customers into making purchases of substandard products which may even be harmful. In this case the product is not harmful but that is likely in order to avoid detection and so prolong the scam.

Both the complainants mentioned in this case were on the verge of changing brands as they were unhappy with the quality of the product. We do not know how long this has gone on for or how many other innocent members of the public were affected. In this way it is obvious to see how a brands image can be damaged by such action

It subverts the normal supply chains of legitimate trade as it is controlled by criminal organisations who seek to maximise profit by avoiding legitimate controls and systems. No duty will have been paid on the products either.

The review will need to ensure confidence in management of the shop do not engage in and encourage criminal activity which also affects citizens of Birmingham as well as others.

The owner has not been able to demonstrate where the supply was purchased from and the enquiries at Bookers did not indicate that she had purchased them there.

The owner should be able to provide full traceability; this doesn't appear to be the case to date. Although the product does not present health risks, buying goods from unknown sellers indicates a lack of concern for the safety of the products sold.

We invite Committee to consider all available options in relation to this request for a review.

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

No

If yes please state the date of that application

Day	Month	Year

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

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 **YES**
- I understand that if I do not comply with the above requirements my application will be rejected **YES**

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

.....

Date 18/12/20

.....

Capacity Trading Standards Officer

.....

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

Post town

Post Code

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.

LICENSING ACT 2003**PREMISES LICENCE**

Premises Licence Number:

1513 / 4

Part 1 - Premises details:

Postal address of premises, or if none, ordnance survey map reference or description	
KVK Supermarket Limited 243-245 Eachelhurst Road Walmley	
Post town:	Post Code:
Sutton Coldfield	B76 1DT
Telephone Number:	

Where the licence is time limited the dates
N/A

Licensable activities authorised by the licence
M2 Sale of alcohol by retail (off the premises)

The times the licence authorises the carrying out of licensable activities			
Monday - Saturday	08:00	-	23:00 M2
Sunday	10:00	-	22:30 M2
Christmas Day	12:00	-	15:00 All
	19:00	-	22:30 M2
Good Friday	08:00	-	22:30 M2

The opening hours of the premises
Not Specified

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

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence KVK Supermarket Limited 243 - 245 Eachelhurst Road Walmley Sutton Coldfield	
Post town: Birmingham	Post Code: B76 1DT
Telephone Number:	
Email	

Registered number of holder for example company number or charity number (where applicable) 11028039
--

Name, address, telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol Mrs Devanayaki Vickneswaran	
Post town:	Post Code:
Telephone Number: N/A	

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 PA1923	Issuing Authority Kensington Upon Thames

Dated 14/12/2020

SHAID YASSER
Senior Licensing Officer
For Director of Regulation and Enforcement

Annex 1 – Mandatory Conditions

Alcohol shall not be sold or supplied except during permitted hours. In this condition, permitted hours means:

a. On weekdays, other than Christmas Day, 8 am. to 11 pm. b. On Sundays, other than Christmas Day, 10 am. to 10.30 pm. c. On Christmas Day, 12 noon to 3 pm. and 7 pm. to 10.30 pm. d. On Good Friday, 8 am. to 10.30 p.m. The above restrictions do not prohibit: (a) during the first twenty minutes after the above hours, the taking of the alcohol from the premises, unless the alcohol is supplied or taken in an open vessel; (b) the ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered; (c) the sale of alcohol to a trader or club for the purposes of the trade or club; (d) the sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces.

Alcohol shall not be sold in an open container or be consumed in the licensed premises.

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 premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol:- 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 a holographic mark.

Annex 2 – Conditions consistent with operating schedule

2a) General conditions consistent with the operating schedule

No enforceable conditions identified from operating schedule.

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

No enforceable conditions identified from operating schedule.

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

No enforceable conditions identified from operating schedule.

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

No enforceable conditions identified from operating schedule.

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

N/A

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

N/A

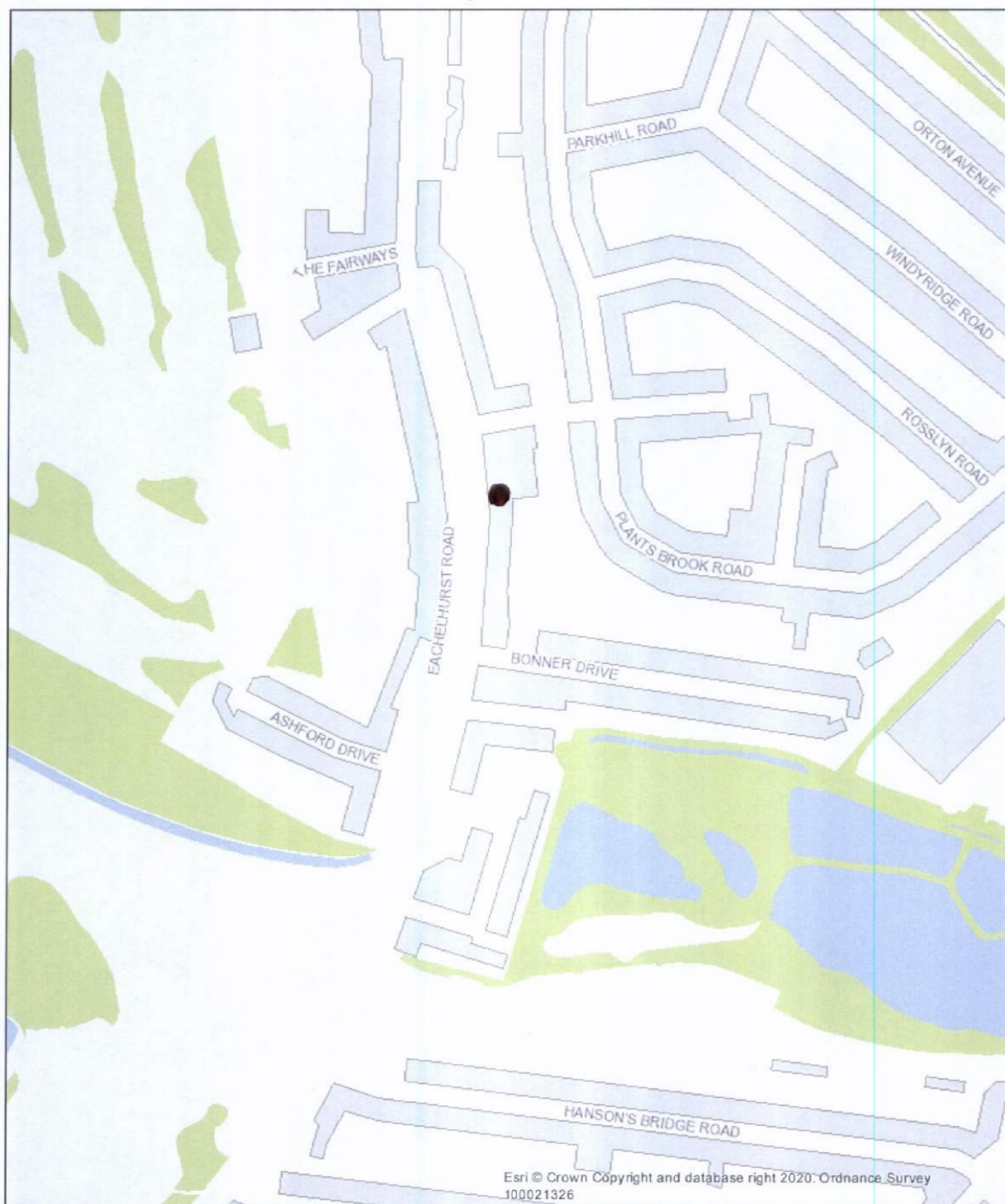
3e) Committee conditions to promote the protection of children from harm

N/A

N/A

Annex 4 – Plans

The plan of the premises with reference number **118027-1513/4** 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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Birmingham
City Council

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