

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	Licensing Sub Committee C
Report of:	Director of Regulation & Enforcement
Date of Meeting:	Wednesday 17th April 2024
Subject:	Licensing Act 2003 Premises Licence – Review
Premises:	Simply Local, 51 Stephenson Street, Birmingham, B2 4DH
Ward affected:	Ladywood
Contact Officer:	David Kennedy, Principal Licensing Officer, licensing@birmingham.gov.uk

1. Purpose of report:
To consider an application to review a Premises Licence.

2. Recommendation:
To consider the review application and representation received and to determine this matter, having regard to: <ul style="list-style-type: none">• The submissions made by all parties• The Statement of Licensing Policy• The Public Sector Equality Duty• The s182 Guidance

3. Brief Summary of Report:
Review application received on 20 th February 2024 from Trading Standards in respect Simply Local, 51 Stephenson Street, Birmingham, B2 4DH. A representation has been received from West Midlands Police as a responsible authority.

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:

Trading Standards applied on 20th February 2024 for a review of the Premises Licence under Section 51 of the Licensing Act 2003 for Simply Local, 51 Stephenson Street, Birmingham, B2 4DH.

A representation has been received from West Midlands Police as a responsible authority, which is attached at Appendix 1.

The Review application is attached at 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 from West Midlands Police, Appendix 1
Review Application Form, Appendix 1
Copy of Premises Licence, Appendix 2
Site location plans, Appendix 3

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: Wednesday, March 6, 2024 2:22 PM
To: Licensing
Subject: WMP Support to Trading Standards review application Licence Number 5050

Good Afternoon Licensing,

West Midlands Police (WMP) support the review application submitted by Trading Standards for the Simply Local Store, Stephenson Place. Premises Licence number 5050.

On the 7th November 2023 I was one of the WMP Licensing Officers who attended the premises as we had received reports that the premises was not complying with one of their operating conditions –

- *No ciders or lagers above 5.5% ABV except for premier ciders or lagers, will be sold or offered for sale.*

On entering the store, it was immediately obvious the alcohol products the premises were offering for sale which would be in breach of the operating condition.

The condition was imposed on the premises licence as Birmingham City Centre suffers from alcohol related crime and disorder by street drinkers. The condition sort to exclude the sale of alcohol products which would be attractive to street drinkers, so not to add to issues in the city and promote the licensing objective of the prevention of crime and disorder.

These products were pointed out to the premises who removed the products of concern from sale.

It was apparent the large amount of disposable vapes being offered sale which were displayed behind the point of sale.

On closer inspection I noticed a large number of the vapes were labelled as being what I believed to be over the legal capacity for disposable vapes to be on sale to the public.

From previous joint visits, at various premises with the Trading Standards Team my understanding is that any disposable vape over 600 puffs are illegal for sale and some of the boxes on sale were showing 4500 puff per vape.

I contacted the other licensing Officers who were at the other premises in the city centre also called Simply Local and operated by the same premises licence holders and they reported identical findings, concerning alcohol being on sale which did not comply with the premises operating condition and what they also believed to be illegal vapes being offered for sale.

I contacted the Trading Standards Team with my concerns regarding the vapes in both premises and they agreed to attend the premises.

I liaised with Trading Standards and attended both premises with them.

I assisted Trading Standards Officers, in both premises, as they seized and removed the illegal vapes from both premises.

There is an obvious public health concern with illegal vapes, as the seller would have no guarantee as to whether the product would be safe for consumption, undermining the public safety licensing objective.

The below is taken from Vape Uk website (22.02.23 at 09.10hrs) which details the risk and concerns of illegal vapes.

It isn't just the high nicotine content, or the copyright breaches. The main concern when you use a fake vape is that it hasn't gone through the proper tests for safety. This means that there's no guarantees about what you're inhaling into your lungs.

Lab tests also revealed compounds such as formaldehyde and acetaldehyde (which are also found in cigarette smoke) at ten times the level in legal vapes. Some even had more than cigarettes.

In a recent expose, it showed footage of workers at a counterfeit vape factory in China testing the products using their own mouths! Those devices, were then sealed, packaged and shipped.

Other photos taken from within these same factories showed workers handling mouthpieces without gloves, filthy sinks and toilets, and cigarette ends on surfaces next to the manufacturing line.

As the vapes are illegal, it raises the questions of where, how and from whom these products have been purchased from.

That fact that the vapes are illegal undermines the prevention of crime and disorder licensing objective.

This illegal trade is not a victimless activity – the victims include:

- The public who are purchasing products they believe to be safe and tested to UK regulations and standards.
- The customer who will not know that the product could contain chemicals and ingredients which could harm their health.
- Other retailers who are selling legal products are unlikely to be able to compete on price point with an illegal product, reducing their sales and profit.
- The legitimate vape companies who have their sales and profits reduced.

West Midlands Police are concerned that this premises was visited by Trading Standards Officers in January 2023 after they had received intelligence that counterfeit vapes were being sold at the premises.

At the visit in January 2023 the premises were left a detailed information pack about the lawful sale of vapes, including the maximum amount of puffs each vape should contain.

From the information supplied by Trading Standards to the premises in January 2023, the premises would have known that all the vapes seized in December 2023 were illegal for sale in the UK and therefore questions the management practices of the premises.

West Midlands Police would request the Licensing Subcommittee to consider all options open to them up to and including revocation of the premises licence if they deem this proportionate, as the premises has previously had an advisory visit by Trading Standards prior to these illegal vapes being seized.

Regards



Chris Jones 55410
Birmingham Licensing Team
West Midlands Police

Working in partnership, making communities safer



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.

1 Paul Ellison (on behalf of Martin Williams, 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	
Simply Local Convenience Store 51 Stephenson Street Birmingham City Centre	
Post town BIRMINGHAM	Post code (if known) B2 4DH

Name of premises licence holder or club holding club premises certificate (if known)
EMPIRE(BIRMINGHAM) LIMITED BRIDGE HOUSE 9-13 HOLBROOK LANE COVENTRY CV6 4AD

Number of premises licence or club premises certificate (if known)
5050

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)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address; Paul Ellson Birmingham Trading Standards 1-3 Ashted Lock Way Aston Birmingham B7 4AZ Our Ref: 10849341
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 | No |
| 3) the prevention of public nuisance | No |
| 4) the protection of children from harm | Yes |

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

On 7th November 2023 the Trading Standards Service received information from West Midlands Police that they were in a premises in the city centre called Simply Local Convenience Store, 51 Stephenson Street, Birmingham , B2 4DH. During the course of their inspection West Midlands Police stated they had found a large number of what they suspected were illegal vaping/e-cigs products for sale and asked for officers from the Trading Standards Service join them at the premises.

Two officers from Trading Standards Service; Enforcement Officer Paul Ellson and Apprentice Enforcement Officer Wahab Mahmood duly attended the premises .On entering the shop they met officers from West Midlands Police. Officer Ellson identified himself and his colleague to a woman behind the counter; Akhjinder Kaur Mahal, the manager of the premises . After explaining the reason for the inspection and issuing the relevant search notices, both officers went behind the service counter where police officers had already removed a large number of vaping/e-cigs of various brands and flavours from the shelves to avoid further sales of the illegal products. They had placed them on to the floor.

All the vaping products were the larger size, that is bigger than 600 puffs and therefore did not comply with the Tobacco and Related Products Regulations 2016. A total of 627 vapes were placed in evidence bags from the floor area, some of which were as much as 9000 puffs. Once this had been completed Officer Ellson proceeded to search the remainder of the premises. He found a number of pre -packed boxes of vaping products and again all of these were over 600 puffs in the cupboards at the bottom of storage display unit opposite the till/counter area. In total there was 210 vape/e-cigs in these boxes which were again placed in evidence bags. The remaining parts of the premises were searched and no others were found that breached Trading Standards legislation.

During the bagging and searching of the premises the Designated Premises Supervisor Mr Gobind Mahal had arrived from another shop; Simply Local , 84 New Street, Birmingham city centre where he was also Designated Premises Supervisor. Trading Standards Officers and West Midlands Police Officers had earlier that day seized over 360 illegal vapes from this site also. The situation was explained to Mr Mahal who signed for the seized goods and the officers left the premises.

PLEASE PROVIDE AS MUCH INFORMATION AS POSSIBLE TO SUPPORT THE APPLICATION

The Licence for Simply Local Convenience Store , 51 Stephenson Street , Birmingham , B2 4DH is Empire (Birmingham) Ltd , registered office Bridge House, 9-13 Holbrook Lane , Coventry, CV6 4AD both Akhjinder Kaur Mahal and Gobind Mahal are directors of this company which was incorporated on October 25th 2018. The Licence was granted on March 21st 2019.

Previous history of this shop.

In January 2023 the Trading Standards Service received an allegation that counterfeit vaping product/e-cigs were been sold from the premises .The premises was visited and advised by an officer on the 18th January 2023 .During the coarse of this visit the assistant manager at the time was given a Vapes Advice Notice which contained the following information----

" It is imperative that you check all your stock of any single use / disposable electronic cigarettes (NVPs) and non-disposable electronic cigarettes(NVPs) for any of the following:

1. If you have NVPs which **do not have an address in the UK** for either the importer or manufacturer;
2. If you have NVPs which **state that they contain Nicotine or Nicotine Salt (Nic Salt) liquid which is over 2% (20mg/ml);**
3. If you have disposable NVPs **that contain more than 2ml of liquid it equates to around 600 – 700 puffs. Or specifies that it delivers more than around 700 puffs;**
4. If you have NVPs **that do not have this exact wording "*This product contains nicotine which is a highly addictive substance*"**

IMMEDIATELY REMOVE THEM FROM SALE, RETURN THEM TO YOUR SUPPLIER AND NOTIFY THIS SERVICE OF WHERE THE STOCK WAS PURCHASED FROM.

IT IS YOUR RESPONSIBILITY TO CHECK AND ENSURE ALL YOUR STOCK COMPLIES FULLY AND THAT YOU ARE ABLE TO PROVIDE PROOF OF PURCHASE WHEN AND IF REQUESTED.

In addition to the above, all e-cigarettes and e-liquids are required to be notified to MHRA before they can be sold. The notification status can be checked through the MHRA website - ECIG Search Page | MHRA again it is

your responsibility to check. This letter is for guidance only and is not an authoritative interpretation of the law.

To ensure this advice is being followed we will be conducting follow up inspections, any non-compliant stock found on the premises will be seized and formal action will be taken which could result in court proceedings and huge fines.

Further information and advice is available from,

- 1) info@mhra.gov.uk Advice for retailers of e-cigs.
- 2) www.businesscompanion.info Tobacco and Nicotine inhaling products.
- 3) www.ukvia.co.uk If in doubt, check it out.
- 4) www.acs.org.uk ACS advice-Electronic Cigarettes."

This visit was designed to engage, explain and encourage the premises to comply with the law if the allegations were true or remind the premises of the obligations if they were not. There have been no other enquires related to the premises.

Recommendations.

An alcohol licence confers on a business a responsibility towards its customers and the community around it. This responsibility should mean that the citizens of Birmingham have confidence in the management of the shop and, especially that they do not trade carelessly or illegally.

There should be obligations to ensure good practice, safety of the public and the greater welfare and protection of the local community. There has been quite clearly a to some extent of two of the four Licensing objectives. The Licence that the Council issues is a privilege not a right. That privilege should ensure that the citizens of Birmingham have confidence in the management of the shop and that they do not engage in illegal activity.

With that privilege there are a series of obligations to ensure good practice, safety of the public and the greater welfare and protection of the local community, none of those obligations are too onerous.

A large quantity of illegal vapes were found to be on sale in the premises, even though the owners of the shop had previously received an advisory visit on vaping and e-cigs and their legality under UK law. This information had either been ignored or wilfully disregarded both actions are not consistent with good practice by a licence holder.

The Committee may decide to either revoke the licence. Suspend it for a limited time or place additional conditions on the licence in this case the latter may be more pertinent. These conditions would be beneficial to the trader and the community at large.

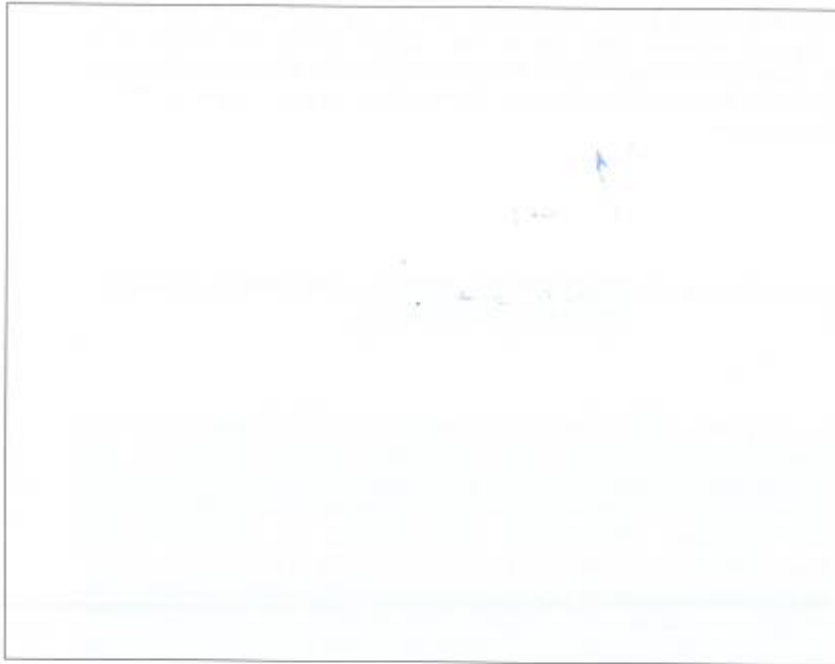
Supplementary

Reference has been made in this review to another seizure of 360 illicit vapes

taken from the Simply Local shop at 84 New St B2 4BA on the same day. Whilst this is a separate shop with its own distinct licence and subject to a separate licence review application it is worth noting that both shops have the same premises licence holder; Empire (Birmingham)Ltd and the same DPS of a Mr Gobind Mahal.

THE PREVENTION OF CRIME AND DISORDER & THE PROTECTION OF CHILDREN FROM HARM

1. Invoices and receipts must be provided for alcohol/tobacco/electronic cigarettes purchased by the Premises Licence Holder or the Designated Premises Supervisor or any person authorised to purchase alcohol/tobacco products/electronic cigarettes on their behalf for sale at the Premises. All Invoices and receipts of alcohol/tobacco products/electronic cigarettes purchased for sale at the Premises must be retained for a period of at least twelve months from the date of the Invoice or receipt. All invoices and receipts of alcohol/tobacco products/electronic cigarettes purchased for sale at the Premises are to be made available to authorised officers of responsible authorities within 48 hours of such a request.
2. That all goods supplied in particular age restricted products, alcohol, tobacco products , vaping products, e-cigarettes and e-liquids must fully comply with all UK laws.



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

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

20/2/24

Capacity Trading Standards Enforcement 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:

5050 / 4

Part 1 - Premises details:**Postal address of premises, or if none, ordnance survey map reference or description**SIMPLY LOCAL
51 - 52 Stephenson Street**Post town:**

Birmingham

Post Code:

B2 4DH

Telephone Number:

Not Specified

Where the licence is time limited the dates

N/A

Licensable activities authorised by the licenceL Late night refreshment
M2 Sale of alcohol by retail (off the premises)**The times the licence authorises the carrying out of licensable activities**Monday - Sunday 05:00 - 04:00 M2
23:00 - 04:00 L**The opening hours of the premises**

Monday - Sunday 05:00 - 04:00

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 Empire (Birmingham) Ltd	
Post town:	Post Code:
Telephone Number: Not Specified	
Email	

Registered number of holder for example company number or charity number (where applicable) 11642770
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Name, address, telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol Mr Gobind Rajan Singh Mahal	
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 7723	Issuing Authority BIRMINGHAM CITY COUNCIL

Dated 30/09/2021

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 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 be 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.

(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 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.

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 Designated Premises Supervisor or another qualified person will train any staff at the premises on the basic laws of selling alcohol and on compliance with the conditions on the premises license with particular focus on the prevention of underage sales of alcohol.

A log of the training will be maintained and the training log can be inspected by any responsible authority upon request

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

Digital CCTV system will be installed at the premises to the reasonable satisfaction of West Midlands Police. The CCTV system must be operational at all times when licensable activity is being carried out.

All recordings taken from the CCTV system must be kept for a minimum of 28 days and any footage shall be made available upon request to officers of the responsible authorities under the Data Protection rules.

Staff will be given on-going training including identification of anti-social or unusual behaviour.

No ciders or lagers above 5.5% ABV except for premier ciders or lagers, will be sold or offered for sale. No alcohol to be consumed on the premises. The premises will not offer or supply disposable cups to customers purchasing alcohol.

Where there are any alcohol sales between midnight and 04:00 hours the Premises Licence Holder will ensure that an SIA approved door supervisor is on duty.

The Premises Licence holder will keep and maintain a register of door supervisors in which shall be recorded at the start of each period of duty the date, name, door supervisors SIA registration number, commencement and finishing time of duty. The Premises Licence holder will produce the register and the verification of door supervisor's identities, upon request, at all reasonable times to any Police Officer or to any Authorised Officer.

Door supervisors must wear high visibility jackets whilst attending the door and must wear high visibility arm bands within the premises itself.

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

Management to provide suitable and sufficient written Health & Safety Risk Assessments together with Fire Risk Assessments.

A member of staff will be trained in First Aid.

Electric, Gas and relevant equipment are to be checked and maintained in working order and tested annually.

Adequate Lighting will be provided in all public areas and outside

Management will ensure that the external areas of the premises are monitored to prevent any anti-social behaviour, public nuisance and ensure litter caused by the premises is kept to a minimum

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

An incident register will be kept on the premises and made available at all times.

The Designated Premises Supervisor will provide responsible management at all times.

The Premises Licence Holder will ensure that any litter emanating from the premises is properly disposed of

before and after trading each day.

The Premises Licence Holder will display prominent, clear and legible signage inside & outside the premises stating the following:

- a) Requesting patrons to be considerate of local residents when leaving the premises
- b) Advising patrons to refrain from drinking alcohol in public areas.

Advising patrons to dispose of any litter in litter bins provided.

2e) Conditions consistent with, and 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.

There will be a provision of sufficient staff to protect children from harm with training on appropriate behaviour.

A refusals register will be maintained at the premises at all times. This register will be made available to any responsible authority on request.

The Premises Licence Holder will be making use of an EPOS till system to record any refusals. This record can be accessed and be made available for responsible authorities.

A notice stating 'No sales of alcohol to persons under 18yrs of age will be displayed at the premises.

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

Annex 4 – Plans

The plan of the premises with reference number **121326-5050/4** 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.

