

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	Licensing Sub Committee C
Report of:	Interim Assistant Director of Regulation & Enforcement
Date of Meeting:	Wednesday 6th July 2022
Subject:	Licensing Act 2003 Premises Licence – Review
Premises:	Tunnel Club, 27 Water Street, Birmingham, B3 1HL
Ward affected:	Soho and Jewellery Quarter
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 13th May 2022 from West Midlands Police in respect of the Tunnel Club, 27 Water Street, Birmingham, B3 1HL.

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:

West Midlands Police applied on 13th May 2022 for a review of the Premises Licence under Section 51 of the Licensing Act 2003 for the Tunnel Club, 27 Water Street, Birmingham, B3 1HL.

The Review application is attached. See Appendix 1.

The Premises Licence is attached at Appendix 2.

Site location plans are attached at Appendix 3.

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:

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.

**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 Police Licensing Officer 60264 Mark Swallow.

(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 The Tunnel Club. 27, Water Street.	
Post town Birmingham.	Post code (if known) B3 1HL.

Name of premises licence holder or club holding club premises certificate (if known) Tunnel Club Birmingham Ltd.
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Number of premises licence or club premises certificate (if known) 3734.
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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)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address West Midlands Police. Lloyd House, Colmore Circus Queensway. Birmingham. B4 6AT.
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 disorder¹
- 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"/>

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

The Tunnel Club is a licensed premises operating from Water St in Hockley, Birmingham. The license number for the premises is 3734 which allows the premises to carry out licensable activity 24 hours a day with standard operating hours of 1000 to 0400 and if the premises wish to operate beyond this then they have to give West Midlands Police 28 days notice.

West Midlands Police have had two encounters with the premises. The first as a result of an incident on 26.3.22 when an underage girl in the premises had her phone stolen and had taken drugs. This resulted in a walkthrough of the premises and a number of discarded drugs dealer bags being discovered.

The second encounter was as a result of a male who it is believed had taken illicit drugs suffering a medical episode as a result of this and later dying. It was discovered during the investigation of this matter that the premises had not implemented the safeguarding measures agreed with the police and subject of a variation to the premises license being submitted as a result of the first incident. The premises also neglected their duty of care to the deceased and failed to deal with a vulnerable person in an appropriate manner.

It is clear that the premises have failed to implement steps agreed with West Midlands Police to prevent issues with illicit drugs being available at the premises and ensure that underage persons did not enter the premises. The premises have also failed to recognise an incident where a customer was suffering a severe medical emergency and have not provided the care that that person urgently needed. When spoken to the premises license holder did not seem to recognise vulnerability or regard it as an issue he and his staff needed to deal with.

West Midlands Police have no confidence that the premises license holder is capable of promoting the licensing objectives as evidenced by his actions. West Midlands Police would therefore request the revocation of the premises license and the removal of the Designated Premises Supervisor.

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

On 26.3.22 an incident occurred at the premises whereby a 15 year old girl had her phone stolen at the premises and had obtained illegal drugs either at the premises or prior to attending there. A police walkthrough of the premises on 30.3.22 revealed numerous empty dealer bags discarded in the premises and the premises license holder and Designated Premises Supervisor could not provide basic information and paperwork.

A meeting was held with police on 5.4.22 and to promote the licensing objectives it was agreed that the door staff would be replaced, an ID scanner would be used for all persons entering the premises, the door staff would be equipped with bodycams and the search policy was to be updated and include the use of an adhoc drugs dog. A minor variation was submitted in relation to the conditions on 19.4.22 and the policies were put in place on 22.4.22.

At 2351 hours 29.4.22 the premises were open and conducting licensable activity. At this time and date a male entered the premises. He was not subject to ID Scanner procedure and was only subject to a cursory pat down search. He was acting in a sensible manner and appeared sober. At 0244 hours the security staffs attention was drawn to the male who was dancing in an erratic manner and falling into people. The security formed the opinion that the male was intoxicated and therefore he was ejected from the premises. The male was then outside the premises for the period of 30 minutes where his behaviour was erratic and showed clear evidence of medical crisis. This was in the hearing and sight of the door team who did not intervene. The male was eventually taken away from the area by members of the public in a car and later died as a result of his medical issues. It is believed this is as a result of taking illicit drugs.

On 12.5.22 the premises license holder was spoken to at Lloyd House Police Station and admitted that no ID Scanner was in place at the time of the incident at that entrance to the premises and that the search of the male fell well short of that which was part of the search policy. He did not recognise that an incident of vulnerability had taken place and had no reasonable steps in place to deal with vulnerable persons.

The actions of the premises fell far short of what would be expected and the premises have failed to promote the licensing objectives in particular:

The prevention of crime and disorder,
The promotion of public safety.

The premises have failed to implement properly steps agreed with West Midlands Police and subject of a variation to the premises license which were put in place precisely to prevent issues in relation to these licensing objectives. West Midlands Police therefore have no confidence that the premises license holder would implement any measures to promote the licensing objectives.

Please tick ✓ yes
No.

Day	Month	Year

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



Date 13.5.22.

Capacity Superintendent 2643 Munro.

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:

3734 / 6

Part 1 - Premises details:

Postal address of premises, or if none, ordnance survey map reference or description	
Tunnel Club 27 Water Street	
Post town:	Post Code:
Birmingham	B3 1HL
Telephone Number:	

Where the licence is time limited the dates

N/A

Licensable activities authorised by the licence

- | | |
|----|--|
| 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 |
| M1 | Sale of alcohol by retail (on the premises) |

The times the licence authorises the carrying out of licensable activities

Monday - Sunday	10:00	-	10:00	E ,F ,G ,H ,M1
	23:00	-	05:00	L

The opening hours of the premises

Monday - Sunday	10:00	-	10:00
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The premises to have a standard operating hours of 10:00am till 04:00am. If the premises wish to go past 04:00am then the Premises Licence holder must give 28 days notice to West Midlands Police (Licensing Department Birmingham West and Central Police Station). Notification to include a risk assessment and security assessmentWest Midlands Police retain the power of veto over any extension past 04:00am if there

has been or likely to be any breach of the
licensing objectives.

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

On Supplies

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence Tunnel Club Birmingham Ltd 27 Water Street Snow Hill	
Post town: Birmingham	Post Code: B3 1HL
Telephone Number: Not Specified	
Email N/A	

Registered number of holder for example company number or charity number (where applicable) 08915580
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Name, address, telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol Anthony John Byrne	
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 5383	Issuing Authority BIRMINGHAM CITY COUNCIL

Dated 25/05/2022

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 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

Provision of regulated entertainment to take place indoors only.

No adult entertainment services or activities permitted on the premises at any time.

The DPS or another qualified person will train any bar staff at the Premises on the basic laws of selling alcohol and on compliance with the conditions on the Premises Licence.

The Premises Licence holder will ensure that all staff are trained with regard to the Licensing Objectives and the Licensing Act 2003.

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

An incident report log will be maintained at the premises and will record all incidents where any of the emergency services are called and any incidents that occur inside or in the direct vicinity of the premises, incident log to record any action taken by door staff or management.

The Premises Licence Holder will actively participate in the local Pub Watch scheme (where available).

When carrying out licensable activity, the premises will operate an ID scanner. Every customer will be required to provide their identification to pass through the scanner and be subject to the scanning process. Customers without ID or fail the scanning machine will not be allowed entry into the premises. Data from the ID scanner will be provided to the police investigating any criminal offence. This data will be provided no later than 24 hours after the request.

When door staff are deployed at the premises, they will wear a bodycam. The minimum number of bodycams the premises have to supply is 4. If there are more than 4 door staff, then any number of that do not have to wear the device. Door staff deployed on the front door will wear a bodycam. Bodycams will be turned on and recording throughout the whole shift of the door staff. Bodycams will be downloadable, show the correct time and date. Footage from bodycams will be stored for a minimum of 14 days and made available within 24 hours of the request of any responsible authority.

Premises to deploy a passive drugs dog from 15th April 2022 for 4 consecutive weekends.

CCTV to be fitted to the specifications and recommendations of West Midlands Police (Licensing Department Birmingham West and Central Police Station). CCTV to be operating at all times that the premises is open for licensable activities. CCTV images to be held for a minimum of 31 days. CCTV all images to be made available and downloadable immediately on request of any responsible authority.

Hours - the premises to have a standard operating hours of 10:00am till 04:00am. If the premises wish to go past 04:00am then the Premises Licence holder must give 28 days notice to West Midlands Police (Licensing Department Birmingham West and Central Police Station). Notification to include a risk assessment and security assessment. West Midlands Police retain the power of veto over any extension past 04:00am if there has been or likely to be any breach of the licensing objectives.

Promoters - for any event at the premises that uses an external promoter, then the Premises Licence holder must give 28 days notice to West Midlands Police (Licensing Department Birmingham West and Central Police Station). Notification to include a risk assessment and security assessment. Any additional security measures identified in the risk assessment will become conditions for that event. These will be detailed in writing to the premises.

Door Supervisors - the requirement for door supervisors will be made through a documented risk assessment, in conjunction with West Midlands Police (Licensing Department Birmingham West and Central Police Station).

Door Supervisors when used will be wearing hi visibility coats/tabards both inside and outside the premises.

At all times whilst employed at the Premises, door supervisors will sign on and off duty for every duty they

work. The Premises Licence holder will record at the start of each period of duty the date, the name, the door supervisors SIA registration number, the commencement and finishing time of duty.

The Premises Licence holder will ensure that profiles and records relating to door supervisors will be produced upon request, at all reasonable times to any Police Officer or to any Authorised Officer of the City Council.

The Premises Licence holder will retain a profile of the Door Supervisors that are working at the premises or have worked at the premises in the last 3 months.

Door Supervisors profile to be proof of identity (passport/driving licence) and proof of address (utility bill/bank statement) that is dated in the last 3 months. Proof of address is not required of proof of identity is photo driving licence.

The Premises to have a documented search policy.

The Premises to have a documented lost and found policy.

The Premises to have a documented drug seizure and retention policy (as agreed with West Midlands Police Licensing Department Birmingham West and Central Police Station).

The Premises to have Challenge 25 policy, with posters showing this.

The Premises to provide at the beginning of the month a planner to West Midlands Police Licensing Department Birmingham West and Central Police Station detailing all events and operating hours for that month.

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

The premises licence holder shall ensure that a written agreement is made with taxi companies to ensure that when taxi's pick up and drop off customers from the licensed premises, 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.

Notices shall be displayed within the licensed premises for customers to view giving details of taxi companies to use.

Clearly legible notices shall be displayed at all exits from the premises requesting patrons to respect the needs of local residents and to leave the premises and area quietly.

Waste receptacles for patrons to deposit cigarette butts shall be placed at the entrances and exits of the premises.

Door supervisors shall supervise and if necessary, take appropriate action to control behaviour of those patrons who wish to queue or smoke outside the premises on Water Street and Livery Street to ensure the patrons do not cause a nuisance to residents by way of noise and if necessary restrict the number of people smoking or, queueing outside the premises at any one time.

Drinks shall not be permitted to be consumed immediately outside the premises. Drinks in open containers shall not be removed from the premises.

Notices shall be displayed near the entrances and exits of the premises advising customers who wish to use the external areas for smoking that they should do so with respect for the nearby residents and keep noise levels to a minimum.

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

All refused sales of alcohol shall be logged in a refusals register which shall be available for inspection by any of the Responsible Authorities.

The premises licence holder shall ensure that persons under 18 years of age are not permitted on 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 **124945-3734/6** 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.

