

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	Licensing Sub Committee A
Report of:	Interim Assistant Director of Regulation and Enforcement
Date of Meeting:	Monday 14th September 2020
Subject:	Licensing Act 2003 Premises Licence – Summary Review
Premises:	PB's, 54 – 57 Key Hill, Hockley, Birmingham, B18 5NX
Ward affected:	Soho & Jewellery Quarter
Contact Officer:	David Kennedy, Principal Licensing Officer, licensing@birmingham.gov.uk

1. Purpose of report:

A review of the premises licence is required following an application for an expedited review under Section 53A of the Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006).

2. Recommendation:

To consider the review and to determine this matter.

3. Brief Summary of Report:

An application under Section 53A of the Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006) was received on 18th August 2020 in respect of PB's, 54 – 57 Key Hill, Hockley, Birmingham, B18 5NX.

Representations have been received from West Midlands Police, Environmental Health and Public Health, 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:

On 18th August 2020, Superintendent Morris, on behalf of West Midlands Police, applied for a review, under Section 53A of the Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006), of the Premises Licence granted to Nickeshia Reid-Davidson in respect of PB's, 54 – 57 Key Hill, Hockley, Birmingham, B18 5NX.

The application was accompanied by the required certificate, see Appendix 1.

Within 48 hours of receipt of an application made under Section 53A, the Licensing Authority is required to consider whether it is appropriate to take interim steps pending determination of the review of the Premises Licence, such a review to be held within 28 days after the day of its receipt, review that Licence and reach a determination on that review.

Licensing Sub-Committee B met on 19th August 2020 to consider whether to take any interim steps and resolved that the Designated Premises Supervisor be removed and that the Premises Licence be suspended pending a review of the Licence. A copy of the decision is attached at Appendix 2.

The review application was advertised, by the Licensing Authority in accordance with the regulations; the closing date for responsible authorities and other persons ended on the 4th September 2020.

An additional representation has been received from West Midlands Police, which is attached at Appendix 3.

A representation has been received from Environmental Health, as a responsible authority. See Appendix 4.

A representation has been received from Public Health, as a responsible authority. See Appendix 5.

A copy of the current Premises Licence is attached at Appendix 6.

Site location plans at Appendix 7.

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's functions under the Licensing Act 2003 are to promote the licensing objectives: -

- 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 and Certificate from West Midlands Police, Appendix 1
Sub-Committee Interim Steps Meeting decision of 19th August 2020, Appendix 2
Additional representation received from West Midlands Police, Appendix 3
Copy of representation from Environmental Health, Appendix 4
Copy of representation from Public Health, Appendix 5
Current Premises Licence, Appendix 6
Site location plans, Appendix 7

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
Take no action

In addition the Sub Committee will need to decide what action, if any, should be taken regarding the interim steps imposed on the 19th August 2020.



PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing the form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary

I - Superintendent 7005 Morris

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

1. Premises details: PBs

Postal address of premises, (or if none or not known, ordnance survey map reference or description): **54 - 57 Key Hill, Hockley**

Post Town: Birmingham

Post Code (if known): **B18 5NX**

2. Premises Licence details:

Name of premise licence holder (if known): **Ms Nickeshia Reid-Davidson**

Number of premise licence (if known): **2866**

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

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

(Please tick the box to confirm)



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

In March 2020 the UK Government stated that all licensed premises should close and not allow people inside the premises to drink or eat. This was a result of the pandemic Covid 19 virus that was spreading through the country and was introduced with other measures to stop the spread of the virus.

On the 4th July 2020 the government announced a relaxing of the lock down measures allowing licensed premises to open with strict social distancing guideline's to stop the spread of the virus. The guidelines can be found in the document Keeping workers and customers safe during COVID-19 in restaurants, pubs, bars and takeaway services, <https://assets.publishing.service.gov.uk/media/5eb96e8e86650c278b077816/working-safely-during-covid-19-restaurants-pubs-bars-takeaways-1408201.pdf>.

These measures included no loud music in venues (quiet background music), no standing (expect to go to the bar) all customers should be seated in 'bubbles' with a 2 meter gap between each group or if not viable 1 meter plus with mitigation, no live entertainment indoors, no dancing and a COVID safe risk assessment must be in place. The risk assessment to demonstrate how the premises are mitigating their circumstances and preventing the spread of the disease. Having a risk assessment is mandatory.

On Saturday 15th August 2020 at approximately 01.30 am the premises was served with an ASB closure notice as it was trading and not adhering to the COVID safe trading guidelines issued by the Government. This notice was signed by a senior officer of West Midlands Police due to their concerns about the premises being reckless in the way they were operating and putting the public's health in danger by risking the spread of COVID 19.

The closure notice was deemed necessary as the premises licence holder – Nickeshia Reid Davison - had ignored previous advice and education given to her from West Midlands Police Officers of how to trade safely within the current COVID guidelines contributing to a public nuisance.

PC Reader and two other officers attended the premises around 10 past midnight on 2nd August 2020. The visit was recorded on bodycam.

In a statement PC Reader has noted he could hear the music before he got to the venue. The premises licence holder was standing outside the venue, together with customers when questioned about the volume of the music she stated 'they like it loud' and the premises was hosting a birthday party. She was then questioned about the capacity of the venue and how many customers she had currently got at the venue – she could not give a definitive answer. PC Reader states that inside the venue was dark with disco lights on. He saw people dancing on a raised platform and other customers standing around the inside the premises. He states that he couldn't hear what the premises licence holder was saying to him as the music was so loud.

PC Reader spoke with the premises licence holder again on 6th August 2020 and raised his concerns again, about the lack of COVID safe trading at the premises and gave her advice on how to trade COVID safe and best practices. This was followed with an email sent to her as detailed in his statement. She also confirmed that the premises would be open on the evening.

On the evening of 6th August 2020 PC Reader again visited the venue with other officers and again this was recorded on bodycam. He first visited the premises at about 6.20pm and the premises licence holder was stood in the rear car park. She informed PC Reader that it was a Jamaican Independence event. There was a DJ set up outside with large speakers. The premises licence holder confirmed that she had received the email sent by PC Reader but had not had time to action it. At this time there was no one inside the venue which had no music playing and the lights were on. During this visit PC Reader noted breaches of the premises licence operating conditions (speakers

being outside) and again had a conversation regarding how to address these. She also stated she understood social distancing and if he came back later he would see that the premises was trading safely.

PC Reader returned at 9.50pm on the same evening. As he approached the premises he noted that the music was significantly louder than on the earlier visit. Although the venue was not busy. PC Reader ends his statement stating that he is concerned by the poor management of the premises where enhanced measures should be in place to protect customers due to the pandemic and risk of infection per government guidelines.

Sgt Giess who is the Licensing Sergeant for Birmingham attended the premises on two occasions on 14th August 2020. On both of these visits Sgt Giess noted that the music was loud, customers were standing and there was no seating in the main area of the venue. On his second visit at the premises persons from the venue noticed him walking towards the entrance and the music was turned down considerably. On both of these early visits the premises only had a couple of customers present.

Sgt Giess returned to the premises at 01.30am on 15th August and will state that when he attended the venue there were over 30 persons inside all standing and around half that number outside with no social distancing in place at the premises. The music inside was that loud that he had to walk outside with the premises licence holder to hold a conversation. It was at this visit that the premises was served with the closure notice which was rescinded the following day.

Officers have spoken with the premises licence holder who is also the DPS on a number of occasions (at least 7) recently and have offered guidance and explained what the expectations are of a licensed premises to trade safely in the current situation. The premises licence holder has also been sent emails and left voice mails which have not been answered. The most notable request being for a copy of the premises COVID 19 risk assessment which has not been forthcoming.

Covid 19 is a worldwide virus that has unfortunately seen many people die. It is an infectious disease which is spread as a result of activities carried out by people, hence the reason for the social distancing measures that the Government had to introduce.

The risk of spreading infections is deemed a "public nuisance". In the case of *R v Rimmington & Goldstein* (2005) UKHL 63, it quoted the leading modern authority on public nuisance as *Attorney general v PYA Quarries Ltd* (1957) 2 QB 169.

The case quotes "a person is guilty of a public nuisance (also known as a common nuisance) who (a) does an act not warranted by law, or (b) omits to discharge a legal duty, if the effect of the act or omission is to **endanger the life, health, property, morals** or comfort of the public, or to obstruct the public in the exercise or enjoyment of rights common to all Her Majesty's subjects" (*Rimmington* at [3]).

Public nuisance is a common law offence which carries an offence of life imprisonment. It is WMP's stance that a serious crime under the definition in RIPA has been fulfilled on the above facts "Serious crime" is defined by reference to s.81 of the Regulation of Investigatory Powers Act 2000. It includes: An offence for which an adult could reasonably be expected to be sentenced to imprisonment for a period of 3 years or more.

The effects of the virus have been shown across all media outlets for many months, and so West Midlands Police are very concerned that these premises decided to ignore the governments social distancing guidelines and various advice given by officers putting the safety of the people and the wider community at risk as well as their families and the wider communities they live in.

Signature of applicant:

Date: 18/2/20.

Rank/Capacity: Supt 705 Mem

Contact details for matters concerning this application: 55410 Chris Jones

Address: Birmingham Licensing Team, Partnerships Office, Police HQ, Lloyd House
Birmingham. B4 4DG.

Notes for guidance:

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

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

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

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

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

West Midlands Police

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

I hereby certify that in my opinion the premises described below are associated with serious crime and disorder

Premises: PBs

Premise Licence Number: 2866

Premise Licence Holder: Ms Nickeshia Reid-Davidson

Designated Premise Supervisor: Ms Nickeshia Reid-Davidson

I am a Superintendent in West Midlands Police.

I am giving this certificate because I am in the opinion that the procedures under the Licensing Act are inappropriate in this case because the standard review procedures are thought to be inappropriate due to the seriousness of the crime, and the serious management failings of the premises concerned.

The actions of the premises took in deciding to open have placed an unnecessary risk to the health of the individuals, families and local communities, at a time where the country is experiencing a national emergency. This is causing a public nuisance

Public nuisance is a serious crime and combined with the national threat that Covid 19 possesses, it warrants the use of this power.

I have considered the use of the normal review procedure but I do not feel this would be appropriate in these circumstances due to the above reasons, and the fact that to maintain the licensing objective of preventing crime and disorder the normal review procedure would not be sufficient.

The severity of the incident is a matter that needs to be brought to the attention of the Licensing Committee immediately.

I am conscious of the guidance on the use of "Expedited Reviews" and given the emphasis that is given to use of this power to tackle serious crime and disorder, my feelings that this process is deemed appropriate are further enforced.

Signed 

Gareth Morris
Supt 7005
BW NPU



BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE B

WEDNESDAY 19 AUGUST 2020

PB'S, 54-57 KEY HILL, HOCKLEY, BIRMINGHAM B18 5NX

That having considered the application made and certificate issued by West Midlands Police under Section 53A of the Licensing Act 2003 for an expedited review of the premises licence held by Nickeshia Reid-Davidson in respect of PB's, 54-57 Key Hill, Hockley, Birmingham B18 5NX, this Sub-Committee determines:

- that the licence be suspended pending a review of the licence, such a review to be held within 28 days of receiving the Chief Officer of Police's application

and

- that Nickeshia Reid-Davidson be removed as the Designated Premises Supervisor

Before the meeting began the Sub-Committee was aware of the amended Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020, the updated Guidance entitled '*Closing Certain Businesses and Venues in England*' issued by HM Government on 3rd July 2020, and the Guidance entitled '*Keeping Workers and Customers Safe in Covid-19 in Restaurants, Pubs, Bars and Takeaway Services*' issued originally by HM Government on 12th May 2020 and updated regularly thereafter.

Members heard the submissions of West Midlands Police, namely that on at least seven occasions from the start of August 2020, when the new arrangements for reopening were being publicised and the lockdown was being eased for licensed premises such as pubs and bars, the Police had observed a general failure by PB's to follow the Government Guidance. Upon visiting the premises, Police found that loud music was playing at a volume which made conversation difficult, and also observed that patrons were not seated but were standing (some were in fact dancing). The Police ascribed these failures to unsatisfactory management by the premises licence holder, who is also the designated premises supervisor.

The Police spoke directly to the premises licence holder to advise, to offer guidance and to explain what is expected of a licensed premises to trade safely in the ongoing Covid-19 pandemic. These numerous attempts to advise had little effect. It was observed that the premises licence holder was even in breach of some of the existing conditions on the licence, for example by placing large speakers outside the premises. Police had requested that she supply the Covid-19 risk assessment which is a mandatory requirement under the Government Guidance; this had not been forthcoming.

Finally on 15th August 2020 a Police Sergeant served the premises with an ASB Closure Notice at 01.30 hours, as it was trading whilst not adhering to the Government Guidelines. The Police Sergeant was concerned that the premises licence holder was being reckless in the way that she was operating, and was endangering public health by risking the spread of Covid-19. The Closure Notice was rescinded the following day.

The Police explained that the premises' decision to trade in this unsafe manner, which was not compliant with the Government Guidance, was an overt risk to the health of individuals, families and local communities, at a time when the country is experiencing a national emergency. The Covid-19 virus is a pandemic which has required all licensed premises to act responsibly and in accordance with both the law and the Government Guidance when trading, in order to save lives. It was therefore a flagrant public nuisance for any licensed premises to breach the Government Guidance by trading in an unsafe manner.

The premises licence holder then addressed the Sub-Committee. Having heard her submissions, the Sub-Committee agreed with the Police that the causes of the serious crime appeared to originate from unsatisfactory internal management procedures at the premises. The Sub-Committee was not impressed with the licence holder's representations, or her answers to questions. All in all, the Sub-Committee considered her to have failed to take her responsibilities seriously.

The Sub-Committee therefore determined that it was both necessary and reasonable to impose the interim step of suspension to address the immediate problems with the premises, namely the likelihood of further serious crime.

The Sub-Committee considered whether it could impose other interim steps, including modification of licence conditions, but considered that this would offer little to address the real issues, which were the unsatisfactory practices and the irresponsible attitude shown by the licence holder.

However, the Sub-Committee determined that the removal of the designated premises supervisor was a very important safety feature given that it was this individual who was responsible for the day to day running of the premises, ie the decision to defy the Government Guidance in order to trade as usual. Therefore the risks could only be properly addressed by the suspension of the Licence but also removal of the DPS, pending the full Review hearing.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued by the Home Office in relation to expedited and summary licence reviews, and the submissions made by the Police and by the premises licence holder at the hearing.

All parties are advised that the premises licence holder may make representations against the interim steps taken by the Licensing Authority. On receipt of such representations, the Licensing Authority must hold a hearing within 48 hours.

All parties are advised that there is no right of appeal to a Magistrates' Court against the Licensing Authority's decision at this stage.

From: Abdool Rohomon
Sent: 04 September 2020 10:43
To: Licensing
Cc: 'Duncan Craig'
Subject: Extra Reps - PB's

Dear Licensing,

West Midlands Police wish to make additional representations against PB's Key Hill, these are on top of the representations made in the expedited review application.

West Midlands Police will show how the premise licence operator has not complied with the number of conditions imposed on the premise licence, some of those that were imposed by a licensing committee (following the premise licence being reviewed in July 2018). These breaches have been witnessed by officers during the visits to the premises since they reopened after Covid lockdown.

West Midlands Police also have intelligence of note and concern around people that attend the premises and even run parts of the operation. Although this is intelligence it does go some way to show how poor the premises is operated.

West Midlands police have also had reports that the premise licence holder for PB's held an event at another licensed premises, after Pb's had had its licence suspended. Initial reports indicate that this event may have resulted in Covid breaches, this is still being investigated as the report only came in from last weekend.

Supporting paperwork will be submitted in due course

Regards

Abs Rohomon. BEM

PC 4075 Rohomon. BEM
BW Licensing
Police headquarters
Lloyd House
Colmore Circus
Birmingham
B4 6NQ

From: Jane Dunsford
Sent: 02 September 2020 15:39
To: Licensing
Subject: Review of PB's 54- 57 Key Hill, Birmingham by West Midlands Police

Dear Licensing,

I would like to join the review on behalf of BCC Environmental Health, I attach my reasoning.

Regards

Jane Dunsford
Environmental Protection Officer

Environmental Protection Unit
Regulation & Enforcement
Neighbourhoods Directorate
Birmingham City Council
Manor House
40 Moat Lane
Birmingham
B5 5BD

On behalf of Birmingham City Council's Environmental Health Department I have reviewed West Midlands police documentation, calling for a review of PB's 54- 57 Key Hill, Hockley, Birmingham and would like to join this review on the grounds of Public Nuisance. The premises is know to Environmental Health and due to complaints from residents on Key Hill Drive in 2018, Environmental Health called the license in for review (known then as De Oriole) on the grounds of Public Nuisance due to intrusive noise from MC shouting into a microphone, loud amplified music, noise from customer vehicles and noise from groups of customers gathering on key Hill Drive shouting and screaming and cars blocking Key Hill Drive.

From that review conditions were attached to the license including provision of a noise management plan, installing a noise limiter approved by Environmental Health and no external speakers to be used. The license was reviewed in July 2018 and to date Environmental Health have received no noise management plan or been asked to approve a noise limiter.

I have visited the site on a number of occasions whilst investigating this complaint in 2018 and would advise that due to the small size of the site and single entrance and exit doors it would be very hard to socially distance inside the site and on the rear car park.

Birmingham Public Health

PBs
B18 5NX

Expedited Review Response

On Behalf of:
Dr Justin Varney
Director, Birmingham Public Health

3 September 2020



Making a positive difference everyday to people's lives



The information contained in this document is provided for the purpose of review by Licensing Committee and may be circulated to all parties of the Review by Licensing Committee as appropriate. This document is not to be circulated to other parties outside of this Review without prior consent from the Author or used for purposes other than for the Review referred to in this report.

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Public Health's Response to Expedited Review

This is a response document from Birmingham Public Health in its capacity as a Responsible Authority (Police Reform and Social Responsibility Act 2011). This document supports the application for a review of a premises licence or club premises certificate under the Licensing Act 2003.

Wherever possible, supporting information contained within this document will be evidence-based and demonstrably refer to one or more of the licensing, those objectives being:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

To promote good practice and a collaborative, multi-agency approach, we will also share this document with the other Responsible Authorities for licensing in Birmingham.

This report is provided on behalf of the Director of Public Health.

Any queries relating to this report should be addressed to:

Kyle Stott
Public Health Service Lead: Places
Birmingham Public Health
PO Box 16732, Birmingham B2 2GF
publichealth@birmingham.gov.uk

1. Premises or club details

<i>Name of premises</i>	PBs
<i>Postal address of premises</i>	54-57 Key Hill Hockley B18 5NX
<i>Premises licence holder</i>	Nickeshia Reid-Davidson
<i>Premises licence number</i>	2866
<i>Designated Premises Supervisor</i>	Nickeshia Reid-Davidson

2. Overview of the Grounds for Review

On Saturday 15th August 2020 at approximately 01.30 am the premises was served with an ASB closure notice as it was trading and not adhering to the COVID safe trading guidelines issued by the Government. The notice was signed by a senior officer of West Midlands Police due to their concerns about the premises being reckless in the way they were operating and putting the public's health in danger by risking the spread of COVID-19.

The closure notice was deemed necessary as the premises licence holder had ignored previous advice and education given to her from West Midlands Police Officers. PC Reader and two other officers attended the premises around 10 past midnight on 2nd August 2020. The visit was recorded on bodycam.

In a statement PC Reader has noted he could hear the music before he got to the venue. The premises licence holder (PLH) was standing outside the venue, together with customers when questioned about the volume of the music the PLH stated "they like it loud" and the premises was hosting a birthday party. When the PLH was questioned on how many customers she had currently got in the venue she could not give a definitive answer. PC Reader states that he saw people dancing on a raised platform and other customers standing around the inside the premises, and that he couldn't hear what the premises licence holder was saying to him because the music was so loud.

PC Reader visited the premises again on 6th August 2020, and raised his concerns again about the lack of COVID safe trading at the premises and gave her advice on how to trade COVID safe and best practices. This was followed with an email sent to her as detailed in his statement. On the evening of 6th August 2020 PC Reader again visited the venue with other officers and again this was recorded on bodycam. He visited the premises at about 6.20pm and the premises licence holder was stood in the rear car park. She informed PC Reader that it was a Jamaican Independence event. There was a DJ set up outside with large speakers. The premises licence holder confirmed that she had received the email sent by PC Reader but had not had time to action it. At this time there was no one inside the venue which had no music playing and the lights were on. During the visit PC Reader noted breaches of the premises licence operating conditions (speakers being outside) and again had a conversation regarding how to address these. She also stated she understood social distancing and if he came back later he would see that the premises was trading safely.

PC Reader returned at 9.50pm and noted that the music was significantly louder than on the earlier visit, although the venue was not busy. PC Reader ends his statement stating that he is concerned by the poor management of the premises where enhanced measures should be in place to protect customers due to the pandemic and risk of infection per government guidelines.

Sgt Giess (the Licensing Sergeant for Birmingham) attended the premises on two occasions on 14th August 2020. On both visits Sgt Giess noted that the music was loud, customers were standing and there was no seating in the main area of the venue. On his second, persons from the venue noticed him walking towards the entrance and the music was turned down considerably. On both of these early visits the premises only had a couple of customers present. Sgt Giess returned to the premises at 01.30am on 15th August and will state that when he attended the venue there were over 30 persons inside all standing, and around half that number outside with no social distancing in place at the premises. The music inside was that loud that he had to walk outside with the premises licence holder to hold a conversation. It was at this visit that the premises was served with the closure notice which was rescinded the following day.

Police officers have spoken with the premises licence holder on a number of occasions (at least 7) recently and have offered guidance and explained what the expectations are of licensed premises to trade safely in the current situation. The licence holder had also been sent emails and left voice mails which have not been answered. The most notable request being for a copy of the premises COVID-19 risk assessment which has not been forthcoming.

West Midlands Police's stance is that a serious crime under the definition in the Regulation of Investigatory Powers Act 2000 (RIPA) has been fulfilled on the above facts. Serious crime is defined by reference to s.81 of RIPA, and it is an offence for which an adult could reasonably be expected to be sentenced to imprisonment for a period of 3 years or more.

3. Public Health response

Licensing Objective	Response
<i>Public safety</i>	<p>In licensing terms, Public safety takes into consideration overcrowding (leading to an increased risk of violence or to the safety of people in the premises). The COVID-19 guidance for premises is clear, people should be seated, people should not be crowding, and certainly should not be dancing in proximity. There is also a lack of a risk assessment for the premises, which cannot explain how they can ensure that overcrowding does not take place.</p> <p>Public Safety also concerns anyone being hurt or having an accident in licensed premises (who should seek medical care and report to the relevant authorities). Public Health has no confidence, based upon the information presented, that the licensee is taking appropriate measures to protect people from harm, in this instance from the heightened risk of transmission of COVID-19.</p>
<i>The prevention of public nuisance</i>	<p>The risk of spreading infections is deemed a "public nuisance". In the case of <i>R v Rimmington & Goldstein</i> (2005) UKHL 63, it quoted the leading modern authority on public nuisance as <i>Attorney general v PYA Quarries Ltd</i> (1957) 2 QB 169. The case quotes "a person is guilty of a public nuisance (also known as a common nuisance) who (a) does an act not warranted by law, or (b) omits to discharge a legal duty, if the effect of the act or omission is to endanger the life, health, property, morals or comfort of the public, or to obstruct the public in the exercise or enjoyment of rights common to all Her Majesty's subjects" (<i>Rimmington at [3]</i>).</p> <p>It is clear from the significant lack of action from the licence holder to implement COVID-19 guidance for premises of this nature that a public nuisance is indeed being created. COVID-19 is a virus that kills and causes significant harm and is easily transmissible. It is the opinion of Birmingham Public Health that the observations reported by WMP in the application for the expedited review constitute a significant risk of harm through the risk of spreading infection, this constitutes a clear public nuisance.</p>

Summary

The Director of Public Health, Dr Justin Varney, has been made aware of this expedited review and has made the following statement:

"As Director of Public Health, I support the police view that this venue is failing to protect the health and wellbeing of the population through inadequate COVID-19 risk reduction measures. Given the significant threat from COVID and the clear national guidelines on the expectations of hospitality venues to ensure COVID safety for customers, the police report represent a serious concern about the management of the venue."

The COVID-19 regulations for licensed premises are clear, they are also readily accessible and available. The guidance was first published on the 11th May 2020, and was last updated on the 12th August 2020. We consider it wholly unacceptable that any licensee should either a) plead ignorance to the existence of this guidance, and b) that a licensee should, if they are aware of the guidance, choose to not follow that guidance.

In the grip of a global pandemic, in a city that has seen significant infection rates and death, and is currently on the Government watchlist due to an increase in infection rates, it is the view of the Director of Public Health for Birmingham City Council that the licence holder has shown a flagrant disregard for the licensing objectives and that the licensing committee should consider all options at their disposal, with revocation of the licence not being considered a disproportionate response in this instance.

There have been no less than seven incidents whereby responsible authorities (namely WMP) have had cause to visit the premises in just 13 days, between the dates of 2nd August – 14th August (inclusive), that is the equivalent of nearly once every two days. During these visits, guidance and education on COVID-19 compliance was given, with scant, if any evidence of implementation by the licence holder of this guidance (below)

Government guidance¹ states that:

All venues should ensure that steps are taken to mitigate the increased risk of virus transmission associated with aerosol production from raised voices, such as when speaking loudly or singing loudly, particularly in confined and poorly ventilated spaces. This includes, but is not limited to, lowering the volume of background music, and refraining from playing music or broadcasts that may encourage shouting, particularly if played at a volume that makes normal conversation difficult.

The Government guidance¹ also states that:

Preventing entertainment, such as broadcasts, that is likely to encourage audience behaviours increasing transmission risk. For example, loud background music, communal dancing, group singing or chanting

It is the view of Birmingham Public Health that COVID-19 guidance (above) has not been followed, despite the significant intervention of WMP on at least 7 occasions. It is the opinion of Birmingham Public Health that the actions (or inaction) of the Licence Holder to promote the licensing objectives is creating a significant public health risk.

It is only fair that we offer the licence holder or representative the opportunity to present their evidence at the licence review, and to view any further footage, for example any bodycam footage or CCTV before we advise the committee on what action we think that they should ultimately take. However, at this time, we can see no other option than revocation of the licence being the advisable course of action given the evidence presented to date. We are willing to withhold our final advice until we have listened to and viewed all of the evidence available through attendance at the licensing committee hearing.

4. References

- ¹ HM Government: Keeping workers and customers safe during COVID-19 in restaurants, pubs, bars and takeaway services.



Public Health

PO Box 16732
Birmingham
B2 2GF

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Making a positive difference everyday to people's lives



BIRMINGHAM CITY COUNCIL

LICENSING ACT 2003PREMISES LICENCE

Premises Licence Number:

2866 / 3

Part 1 - Premises details:

Postal address of premises, or if none, ordnance survey map reference or description	
PB's 54 - 57 Key Hill Hockley	
Post town:	Post Code:
Birmingham	B18 5NX
Telephone Number:	
Not Specified	

Where the licence is time limited the dates

N/A

Licensable activities authorised by the licence

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)
M3	Sale of alcohol by retail (both on & off the premises)

The times the licence authorises the carrying out of licensable activities

Thursday – Saturday	15:00	-	02:00	All
Sunday	15:00	-	00:00	All
From the end of permitted hours on New Year's Eve to the commencement of hours on New Year's Day				All

The opening hours of the premises

Thursday – Saturday	15:00	-	02:00
Sunday	15:00	-	00:00
From the end of permitted hours on New Year's Eve to the commencement of hours on New Year's Day			

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

On and Off Supplies

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Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence Ms Nickeshia Reid-Davidson	
Post town:	Post Code:
Telephone Number: Not Specified	
Email N/A	

Registered number of holder for example company number or charity number (where applicable) N/A

Name, address, telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol Ms Nickeshia Reid-Davidson	
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 19/000186/LAPER	Issuing Authority SANDWELL METROPOLITAN BOROUGH COUNCIL

Date 08/10/2019

SHAID YASSER
Senior Licensing Officer
For Director of Regulation and Enforcement

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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: $\frac{1}{2}$ pint; (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and (iii) still wine in a glass: 125 ml; (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available."

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

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

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

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.

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Annex 2 – Conditions consistent with operating schedule

2a) General conditions consistent with the operating schedule

The Licence Holder will ensure that all staff are briefed on the Licensing Objectives, in particular no underage drinking, no drunkenness on the Premises or outside of the Premises, no use of drugs, no violent or anti - social behaviour and the need to protect children from.

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

The Licence Holder will ensure responsible management controls on the premises i.e. capacity levels.

Training and Supervision of all staff to adopt best practice, and to adhere to the Portman Group policy on drinks strategy.

Staff will receive ongoing training including the identification of anti - social behaviour or unusual behaviour.

Proof of age scheme in force at the Premises.

The Licence Holder will ensure that internal and external lighting is checked regularly.

The Premises have the benefit of 8 CCTV cameras installed and they will be operated and maintained to the satisfaction of West Midlands Police.

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

A member of staff on the Premises will be trained in first aid.

Health and safety risk assessments will be carried out regularly.

All electrics, gas and fire equipment will be checked and maintained in working order and tested annually.

Fire Risk assessment will be carried out weekly.

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

A zero tolerance to drunken and anti - social behaviour shall be adopted at the Premises.

Management and staff voluntarily follow best practice e.g. control of noise from pubs and clubs.

The Licence Holder will ensure that out of hours deliveries are monitored.

All staff will be trained to ensure that patrons vacate the premises quietly.

Ventilation of the premises will be maintained to prevent nuisance of odour and noise.

The Licence Holder will ensure that recorded music sound levels are monitored.

The Licence Holder will ensure that all windows will be kept closed after 23.00 hours.

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

Children must be accompanied by a responsible person who has attained the age of 18.

No children are allowed at the bar serveries.

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Annex 3 – Conditions attached after hearing by licensing authority

3a) General committee conditions

Conditions as attached below by Licensing Sub Committee C on Wednesday 5th July 2018 following a Review of the application made by Environmental Health:

No outdoor speakers shall be used for the playing of amplified music.

After dispersal of patrons at closing time, the Premises Licence Holder shall ensure that staff from the premises undertake a litter patrol in the general vicinity of the premises.

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

The premises to have a written dispersal policy, to be provided in advance to both Birmingham Central licensing department and BCC Environmental Health officers (address for each responsible authority as determined in the statement of licensing policy for Birmingham City Council), the dispersal policy to be agreed in writing with both Birmingham Central licensing department and BCC Environmental Health officers. The dispersal policy to be implemented at all times the premises is open for licensable activity

Door supervisors – the number of door supervisors is to be determined through a written and documented risk assessment. The risk assessment to be provided to any officer of any authority upon request.

The risk assessment must take into account the dispersal policy and deployment of security staff outside the premises.

Door supervisors deployed outside the venue will wear hi visibility coats and have body worn CCTV cameras. Body worn cameras must be operational and recording at all times the premises is open for licensable activity

Images from any bodycam footage, to be made immediately available and downloadable to any officer from a responsible authority

3c) Committee conditions to promote public safety

N/A

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

To avoid nuisance being caused to neighbours the DPS, or other nominated person/staff, shall monitor the external areas of the premises (including the designated smoking area) after 23:00 hours. In addition the DPS shall ensure that an appropriate number of Door supervisors/ the DPS, or other nominated persons shall monitor and control people entering and queuing and exiting the venue after 23.00. If necessary, they shall remind customers to be respectful of neighbors and where necessary they shall take appropriate steps to avoid customers using Key Hill Drive (including use for car parking) to avoid such activities causing a nuisance.

No new customers shall enter the premises after 1 am Friday to Saturday.

The DPS shall, within 3 months of the date of issue of this licence, submit in writing a noise management plan to Environmental Protection Unit of Birmingham City Council. The noise management plan shall outline the measures to be adopted to reduce the noise impact of activities associated with the premises including music, smoking area, number of Door Supervisors, number of persons allowed on key Hill Road customer access and egress (include parking) and dispersal of customers from the surrounding area at the end of the night. All operational controls and management actions required by the approved noise management plan shall be instigated at all times. The noise management plan shall be updated regularly and all staff shall be adequately trained in their role in implementing the plan.

All external doors and windows shall be kept closed during regulated entertainment except as necessary for safe and effective access and egress.

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Prior to any regulated entertainment involving amplified music taking place, a Noise Limiting Device (NLD) of a type approved by the Environmental Protection Unit of Birmingham City Council shall be fitted to the serve any area of the premises used for amplified music or sound. The NLD shall be set at a level agreed with the Environmental Protection Section to ensure that the volume of music is controlled to avoid noise nuisance to the occupiers of nearby buildings. The installation of the NLD shall be notified to the Environmental Protection Section prior to use and shall meet the following criteria:

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

No drinks shall be removed from the premises.

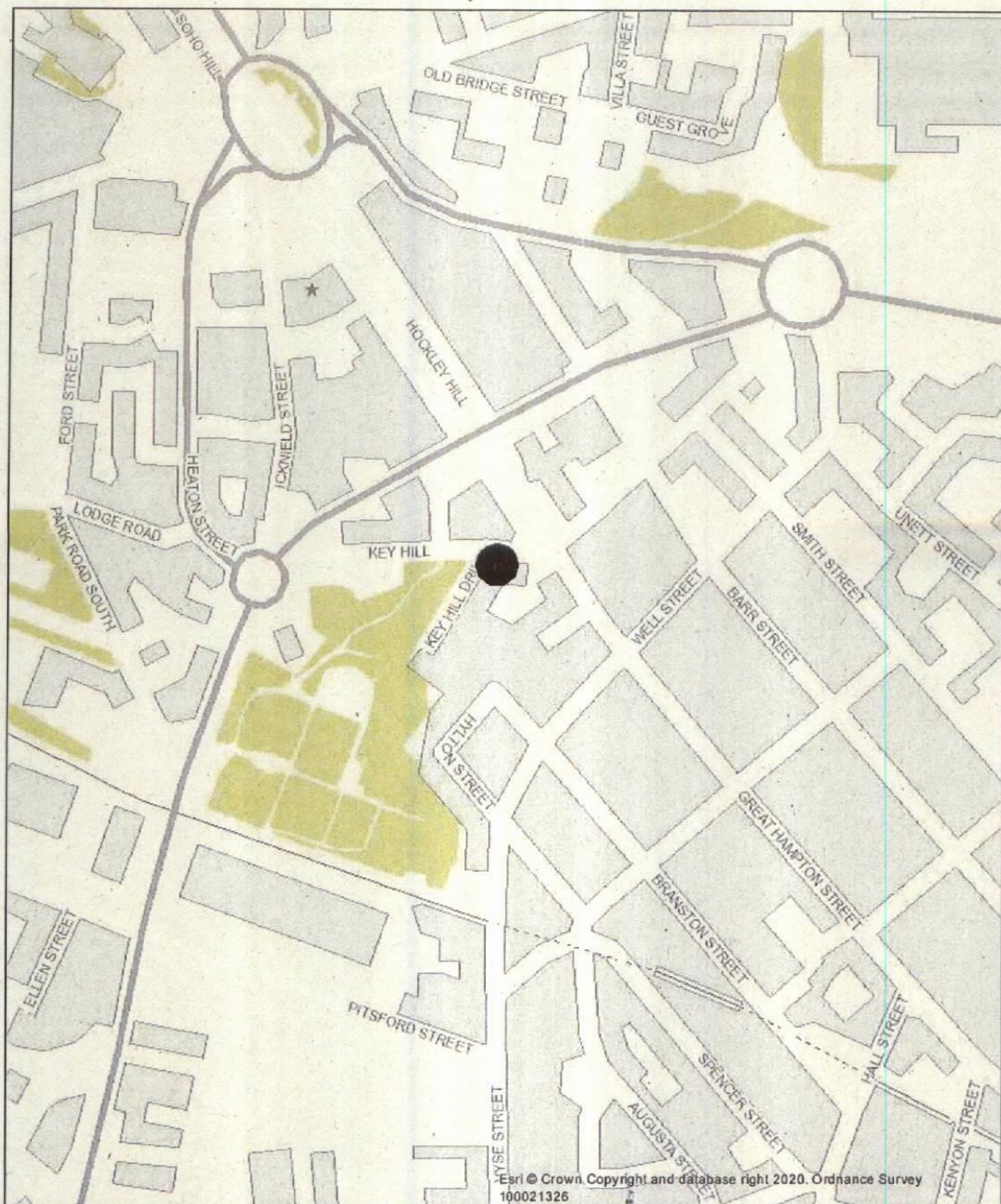
3e) Committee conditions to promote the protection of children from harm

N/A

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Annex 4 – Plans

The plan of the premises with reference number **112813-2866/3** 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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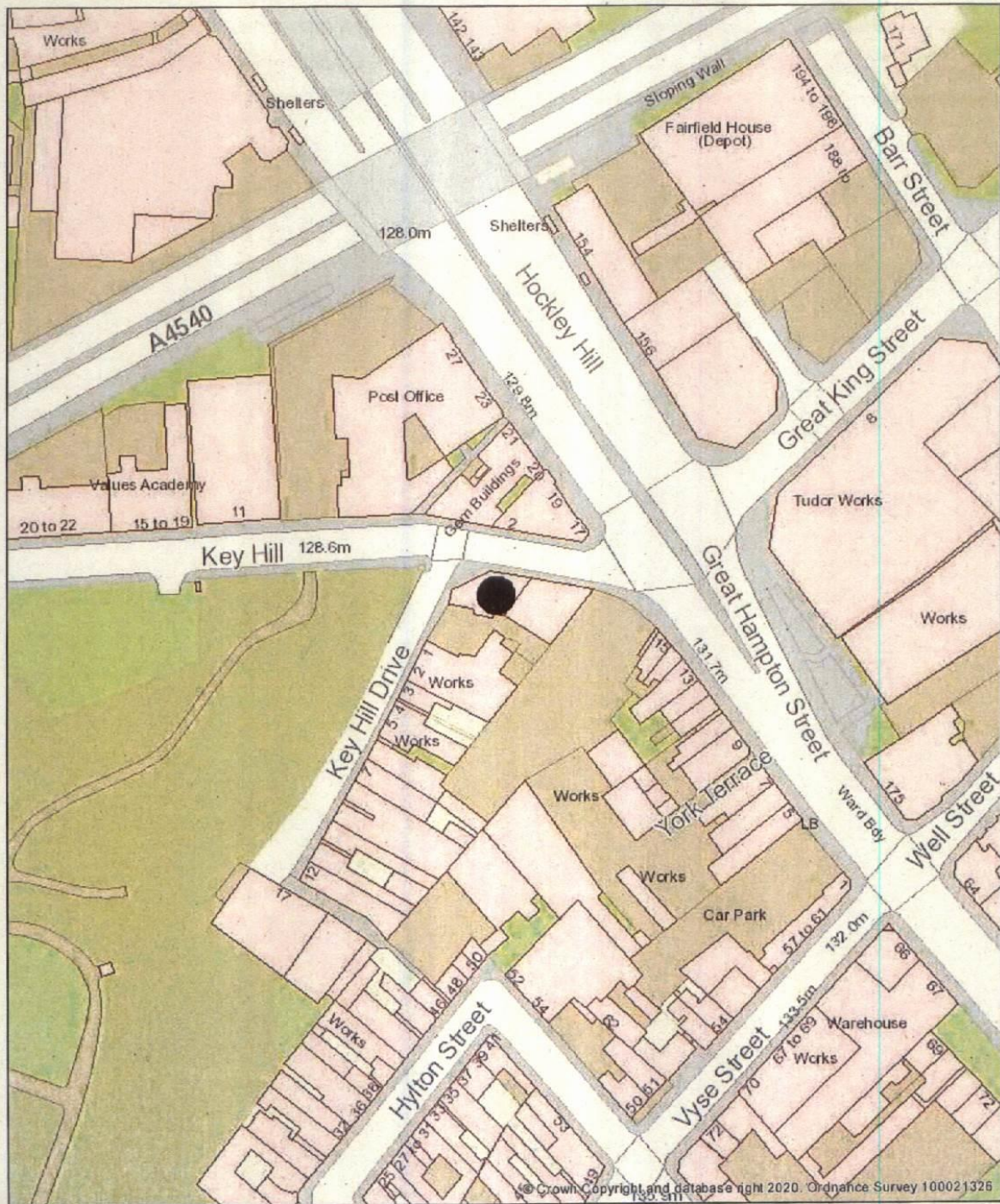
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