

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	Licensing Sub Committee C
Report of:	Assistant Director of Regulation and Enforcement
Date of Meeting:	Wednesday 17th April 2019
Subject:	Licensing Act 2003 Premises Licence – Summary Review
Premises:	Etiquette, Unit B202 – B204 Arcadian Centre, Hurst Street, Birmingham, B5 4TD
Ward affected:	Bordesley & Highgate
Contact Officer:	Bhapinder Nandhra, Senior Licensing Officer, 0121 303 9896 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 21st March 2019 in respect of Etiquette, Unit B202 – B204 Arcadian Centre, Hurst Street, Birmingham, B5 4TD.

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 21st March 2019 Superintendent Green, 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 Living Leisure Limited in respect of Etiquette, Unit B202 – B204 Arcadian Centre, Hurst Street, Birmingham, B5 4TD.

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 A met on 22nd March 2019 to consider whether to take any interim steps and resolved that the Premises Licence be suspended pending a review of the Licence. A copy of the decision is attached at Appendix 2.

The Premises Licence Holder was notified of the interim steps taken by the Licensing Authority and subsequently made a representation at 10:05am on 28th March 2019. See Appendix 3.

As a result of this representation the Licensing Sub-Committee met on 29th March 2019 and having heard from representatives of the licence holder and West Midlands Police resolved that the Premises Licence remain suspended until the following conditions are complied with:

- Mr Azarian has no involvement with the management and operation of the business owned by Wayne Tracey (Snobs Management Limited)
- An operating manual of the proposed business for Etiquette is submitted to WMP subject to their approval.

A copy of the decision is attached at Appendix 4.

On 28th March 2019, an application was submitted to the Licensing Section to vary the Designated Premises Supervisor from Pourian Azarian to Wayne Tracey.

An application was also received on 28th March 2019 to transfer the premises licence, from Living Leisure Limited to Snobs Management Limited. Both applications sought to take immediate effect.

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 5th April 2019.

A copy of the current Premises Licence is attached at Appendix 5.

Site location plans at Appendix 6.

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 22nd March 2019 , Appendix 2
Representations back against Interim Steps decision of 22nd March 2019, Appendix 3
Sub-Committee Interim Steps Meeting decision of 29th March 2019, Appendix 4
Current Premises Licence, Appendix 5
Site location plans, Appendix 6

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 step of suspension imposed on the 29th March 2019.

REGULATION & ENFORCEMENT
LICENSING SECTION
DATE RECEIVED
21 MAR 2019
REF NO RECEIVED 9:11am
INITIALS Bn



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

1 - Supt Ian Green

(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: Etiquette

Postal address of premises, (or if none or not known, ordinance survey map reference or description): Unit B202 – B204, Arcadian Centre, Hurst Street

Post Town: Birmingham

Post Code (if known): B5 4TD

2. Premises Licence details:

Name of premise licence holder (if known): Living Leisure Limited

Number of premise licence (if known): 4212

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)**

At 02:38 hours on Monday 18th March, West Midlands Police were notified by Ambulance control that they had 2 patients at a premises called Etiquette, with one being unconscious.

Officers were sent to the premises and officers noted that the inside of the premises had been "trashed", the had injured parties, one of whom was unconscious and that any offenders had not been detained.

One of the injured person had a serious head injury and had been placed in an induced coma, in total there were 4 injured parties that were being dealt with by the ambulance service.

The cctv was checked at the premises by officers, it was noted that the CCTV timing was one minute ahead of the actual time as shown on the officers phone.

The CCTV shows that at 02.21: a disturbance starts by the bar, which is at the top of the cctv imagery, this very quickly escalates into what can only be described as a mass brawl, that stops and starts on multiple occasions.

People are knocked to the floor, and then repeatedly kicked to what appears to be his head, more fights continue with other groups, people are seen to protecting individuals who are being hit with bottles, tables, ice buckets.

Security are ineffective, 3 can be seen of the cameras, they cannot pull people off, when they eject people they are just let back in. Innocent people that happen to be sitting on the seats get tangled up in the serious disorder as it spirals out of control.

The scale of the disorder is difficult to describe in words, the CCTV shows the true extent of the disorder and the level of violence used throughout.

From viewing the CCTV officers have also deduced that people were taking drugs inside the premises and a person can be seen handing over a nitrous oxide canister to someone.

A male can clearly be seen on the floor and not moving, he has had a sustained attack on him, where two offenders were repeatedly punching and kicking the male, security are very close to this and yet do not detain any of them, and they then continue to fight with others in the club.

The male on the floor has sustained a serious head injury and was being assisted by an off duty nurse, and it now transpires that the male has a bleed on the brain.

The only recorded call to the Police is from the ambulance service, which happens over ten minutes after the incident had started.

The injuries to the person on the floor have been crimed as a Section 18 wounding with intent and would be classed as serious crime if someone was to be convicted of it. There is no definition of serious disorder, but I am content that the level of severity of disorder witnessed in the CCTV warrants the label of serious disorder.

West Midlands Police are seeking the ssuspension of the licence.

Signature of applicant:

Date: 21/3/19

Rank/Capacity: Supt 1218 GREGG - BW NPM

Contact details for matters concerning this application: Pc 4075 Abdool ROHOMON

Address: Birmingham Licensing Dept c/o Birmingham Central Police Station,
Birmingham

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: Etiquette

Premise Licence Number: 4212

Premise Licence Holder: Living Leisure Limited

Designated Premise Supervisor: Mr Pourian Azarian

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 disorder of the premises concerned.

The level and seriousness of the incident in terms of the serious disorder and the serious crime and subsequent injuries warrant 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 incidents is a matter that needs to be brought to the attention of the Licensing Committee immediately.

The concern of West Midlands Police is that if steps are not taken to consider the running of these premises they will continue to be used in the manner in which they were discovered on the 18th March 2019.

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

1215 Supt GCG

**BIRMINGHAM CITY COUNCIL
LICENSING SUB COMMITTEE - A**

FRIDAY 22 MARCH 2019

Etiquette, Unit B 202 – B204, Arcadian Centre, Hurst Street, B5 4TD

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 Living Leisure Limited in respect of Etiquette, Unit B 202 – B204, Arcadian Centre, Hurst Street, B5 4TD 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

The Sub-Committee's reasons for imposing these interim steps are due to concerns by West Midlands Police in relation to matters which came to light at the premises on 18 March 2019 as outlined in the Chief Officer of Police's certificate and application.

The Sub Committee determined the causes of the serious crime and serious disorder appeared to originate from various patrons of the premises and very poor security measures, which resulted in two injured patients requiring urgent medical assistance.

Members were extremely concerned by the lack of care and assistance shown towards the victims, in particular one male who lay unconscious near the stairwell in front of security staff for a considerable period of time.

The Sub Committee felt there was a complete lack of control by the security staff and the premises licence holder/DPS, over what can only be described as a mass brawl.

Further there were two incidents of drug taking in plain sight of security, which brought into question the suitability of the licence holder to manage the business in a safe and responsible way.

Members were shocked to learn having watched the premises CCTV footage in private that nothing was done to control and contain the serious disorder, and more importantly to call the emergency services, particularly the police.

It is therefore necessary and reasonable to impose the suspension to address the immediate problems identified with the premises, in particular the likelihood of serious crime and or serious disorder occurring at the premises, and to promote the prevention of crime and disorder objective in the Act.

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 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: Carl Moore
Sent: 28 March 2019 10:05
To: David Kennedy
Cc: Licensing
Subject: Appeal Notice re Interim Steps against ETIQUETTE NIGHTCLUB

Dear David,

Re: ETIQUETTE NIGHTCLUB, Unit B202 - B204, Arcadian Centre, Hurst Street, Birmingham, B5 4TD

Please take note that the premises licence holder for Etiquette Nightclub hereby makes representations against the interim steps imposed upon the licence by the Licensing Authority on Friday 22 March 2019 in accordance with 53B(6) of the Licensing Act 2003.

Please could you arrange a hearing to consider those representations within forty-eight hours accordingly.

The client has instructed myself and Sarah Clover, barrister from Kings Chambers to act as there legal representatives.

Many thanks

Carl

Carl Moore

C.N.A. Risk Management Ltd

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BIRMINGHAM CITY COUNCIL
LICENSING SUB COMMITTEE C

29 March 2019

Etiquette, Unit B 202 – B204, Arcadian Centre, Hurst Street, B5 4TD

That, having considered the representations made on behalf of Snobs Management Limited the premises licence holder for Etiquette, Unit B 202 – B204, Arcadian Centre, Hurst Street, B5 4TD in respect of the interim steps imposed on the 22 March 2019, this Sub-Committee hereby determines that the licence will remain suspended until the following conditions are complied with by Wayne Tracey.

1. Mr Azarian has no involvement with the management and operation of the business owned by Wayne Tracey
2. An operating manual of the proposed business for Etiquette is submitted to WMP subject to their approval.

The Sub-Committee carefully considered the representations made by the police and on behalf of the new proposed DPS and premises licence holder, Mr Wayne Tracey.

In relation to the incident on 18 March 2019, the members identified that the blame lay with the security company hired by Mr Azarian, who attended the hearing in order to assist the Member's queries and concerns. It became clear to the Member's that Mr Azarian was fully responsible for the lack of control over the unfolding events of that night which led to the expedited review application by WMP.

Members carefully considered the new business proposal put forward by Mr Tracey and his barrister in respect of Etiquette, and accepted there was a clear separation in the legal ownership and management of the business between Mr Azarian to Mr Tracey which was seen as a positive step in overhauling the nature and style of Etiquette.

The Sub Committee also carefully considered WMP submissions regarding the lack of clarity around the proposed operation of the business and the need for the suspension to remain in place until the review hearing date. However, members took account of Mr Tracey's extensive track record of running a successful and well established licensed venue in the city, and that he had submitted a DPS transfer application with immediate effect that as yet not had been objected to by WMP.

In view of the above, members considered it would be appropriate to lift the suspension provided that Mr Tracey did not have Mr Azarian involved in any way

with the business going forward, and that Mr Tracey supply a copy of his operation manual to the satisfaction of WMP as evidence of a new fresh start.

The Sub-Committee therefore considered that lifting the suspension of the premises licence in light of the new material changes in respect of Etiquette was an appropriate and proportionate measure subject to the two conditions being complied with for the promotion of the licensing objectives.

In reaching this decision, the Sub-Committee has given due consideration to the guidance issued by the Home Office in relation to expedited and summary licence reviews, the certificate issued by West Midlands Police under Section 53A of the Licensing Act 2003 and the application for review.

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

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LICENSING ACT 2003PREMISES LICENCE

Premises Licence Number:

4212 / 1

Part 1 - Premises details:

Postal address of premises, or if none, ordnance survey map reference or description	
Etiquette Unit B202 - B204 Arcadian Centre Hurst Street	
Post town: Birmingham	Post Code: B5 4TD
Telephone Number: Not Specified	
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
M3	Sale of alcohol by retail (both on & off the premises)
The times the licence authorises the carrying out of licensable activities	
Monday - Sunday	10:00 - 04:30 E,F,G,M3
The opening hours of the premises	
Monday - Sunday	10:00 - 04:30
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 Living Leisure Limited C/o Hayes Chartered Accountants Colman House 121 Livery Street	
Post town: Birmingham	Post Code: B3 1RS
Telephone Number: N/A	
Email N/A	

Registered number of holder for example company number or charity number (where applicable) 9104979

Name, address, telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol Mr Pourian Azarian	
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 026833	Issuing Authority SANDWELL METROPOLITAN BOROUGH COUNCIL

Dated 05/11/2014

Nicola Stansbie
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: ½ pint; (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and (iii) still wine in a glass: 125 ml; (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available."

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

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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.

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Annex 2 – Conditions consistent with operating schedule

2a) General conditions consistent with the operating schedule

The Premises License holder shall ensure there is training of staff and management in the sale of alcohol.

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

CCTV to be installed and recording to the recommendation and specification of West Midlands Police, at all times the premises are open for licensable activity. Recorded data to be held for a minimum of 28 days and to be made available to West Midlands Police or any responsible Authority on request.

The CCTV to record real time quality images at the entrance, throughout the public areas of the premises and in the immediate vicinity outside the premises.

An incident book will be maintained on the premises, and will be made available to any Responsible Authority on request.

Premises to use SIA registered door staff and will operate a zero tolerance policy in relation to drugs.

Any person known by our security provider, or presented to us in Pub Watch Meetings to have caused, linked or involved in incidents of crime or disorder including being barred from venues across the West Midlands will not be permitted into the premises.

West Midlands Police to have a power of veto after 3am, if the venue wishes to go past 3am for any licensable activity. This power of veto only to be used if any of the 4 licensing objectives have been or likely to be breached. If power of veto used full written explanation to be given to the DPS prior to the original event.

Venue to provide 28 days notice for new events or new promoters who wishes to conduct a promotion at the premises. Premises also to provide a full risk assessment with the notification. West Midlands Police to have a power of veto over such an event.

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

Notices displayed on the premises asking patrons to leave the premises quietly.

All regulated entertainment taking place on the premises shall be inaudible in the nearest residential premises. All windows should be closed after 23:00 hours and doors only opened after this time for entry and egress from the premises.

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

Persons under the age of 18 will not be permitted to remain on the premises after 22:00 hours.

Proof of age policy is enforced and the only type of identification that will be accepted is a photo driving license, passport or PASS accredited identification. Staff will be trained and a record will be kept.

Challenge 25 Policy will be implemented at the premises.

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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

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Annex 4 – Plans

The plan of the premises with reference number **87965-4212/1 (Drawing No 1014_05)** which is retained with the public register kept by Birmingham City Council and available free of charge for inspection between the hours of 9am – 4pm Monday, Tuesday and Thursday, 10am – 4pm Wednesday and 9am – 3.30pm Friday (excluding Bank Holidays etc) at the Licensing Service, Crystal Court, Aston Cross Business Village, 50 Rocky Lane, Aston, Birmingham B6 5RQ.



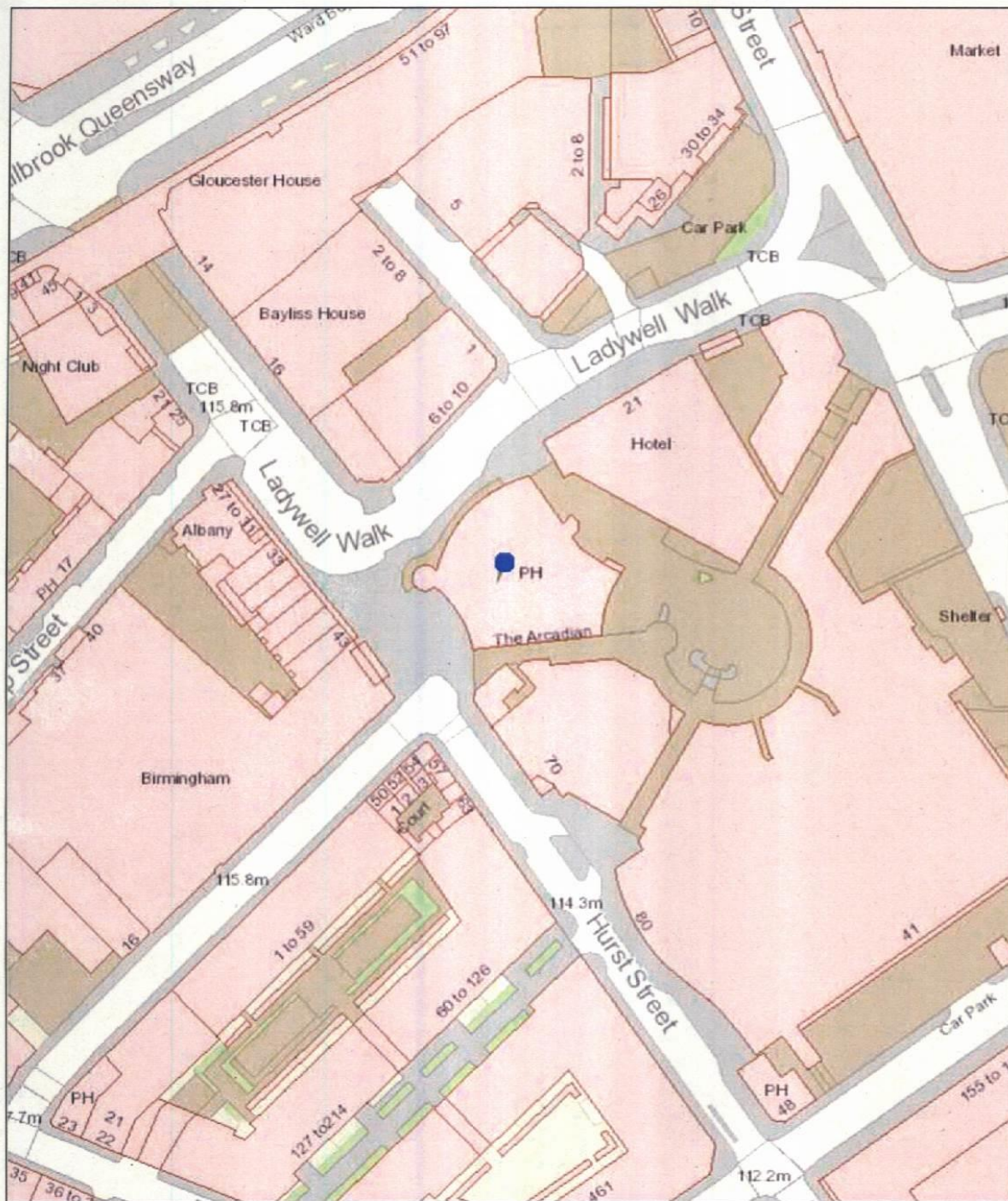
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