

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	Licensing Sub Committee B
Report of:	Acting Director of Regulation & Enforcement
Date of Meeting:	Tuesday 23rd January 2018
Subject:	Licensing Act 2003 Premises Licence – Review
Premises:	Costcutter, 442 – 444 Birchfield Road, Perry Barr, Birmingham, B20 3JG
Ward affected:	Lozells & East Handsworth
Contact Officer:	David Kennedy, Principal Licensing Officer, 0121 303 9896, 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 4th December 2017 from the Chief Inspector of Weights and Measures in respect of Costcutter, 442 – 444 Birchfield Road, Perry Barr, Birmingham, B20 3JG.

A representation has been received from West Midlands Police, as a responsible authority.

4. Compliance Issues:

4.1 Consistency with relevant Council Policies, Plans or Strategies:

The report complies with the City Council's Statement of Licensing Policy and the Council's Corporate Plan to improve the standard of all licensed persons, premises and vehicles in the City.

5. Relevant background/chronology of key events:

The Chief Inspector of Weights and Measures applied on 4th December 2017 for a review of the Premises Licence under Section 51 of the Licensing Act 2003 for Costcutter, 442 – 444 Birchfield Road, Perry Barr, Birmingham, B20 3JG.

A representation has been received from West Midlands Police, as a responsible authority. See Appendix 1

The Review application is attached, see Appendix 2.

The Premises Licence is attached at Appendix 3.

Site location plans at Appendix 4.

When carrying out its licensing functions, a licensing authority must have regard to Birmingham City Council's Statement of Licensing Policy and the Guidance issued by the Secretary of State under s182 of the Licensing Act 2003.

The Licensing Authority is also required to take such steps as it considers appropriate for the promotion of the licensing objectives, which are: -

- a. The prevention of crime and disorder;
- b. Public safety;
- c. The prevention of public nuisance; and
- d. The protection of children from harm.

6. List of background documents:

Copy of the representation as detailed in Appendix 1
Review Application Form, Appendix 2
Copy of Premises Licence, Appendix 3
Site location plans, Appendix 4

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.

Appendix 1

From: bw licensing
Sent: 05 December 2017 08:56
To: Licensing
Subject: Premises Licence representation - 442-444 Birchfield Road. B20 3JG

Good Morning Licensing,

West Midlands Police support the representation made by Birmingham Trading Standards regarding Costcutter 442-444 Birchfield Road. B20 3JG – premises licence number 3232. The representation is supported under the protection of children from harm, public safety and prevention of crime & disorder licensing objectives.

Mr Waheed Khan is both the DPS and Premises Licence Holder.

The sale of alcohol to children appears to be an on-going issue / problem at this premises as it has been noted that Trading Standards had previously visited in January 2017 after receiving intelligence that the premises was selling alcohol to minors. The premises was left a 'Traders Notice' at this visit. The sale of alcohol to children can only be monetary led and profit orientated with the possible consequences of such actions seemingly of no concern as long as money is 'going in the till.'

As alcohol was sold to a 14 year old child on 28th July 2017 – (6 months after Trading Standards initial visit) this would indicate that the Premises Licence Holder and DPS had totally disregarded the advice given by Trading Standards in January 17 and has no intention to comply with the licensing objectives or licensing legislation.

Although it was not the DPS and Premises Licence Holder who made the sale of alcohol it appears that the sale of alcohol to children was the norm at this premises with Trading Standards having received intelligence of such, prior to their initial visit in January 2017.

The DPS and Premises Licence Holder has stated that he had trained all his staff. This now would question the extent and content of the training.

The member of staff who sold the alcohol has stated in interview that he had thought it was a soft drink and only usually 'stacked the shelves.'

The item sold / purchased was a very large bottle of WKD valued at £2.99. This would have been an unusual size and surely expensive for a soft drink. The bottle would have also had warnings and aged restricted signage on the label.

The fact that the member of staff usually stacked the shelves would indicate that he almost certainly would have stacked WKD bottles with the other alcohol on sale in the premises.

If the member of staff had thought that he had sold a soft drink then the question has to be asked of why he originally denied the sale had taken place and was obstructive to officers when they entered the store after the sale.

He also admitted to officers that he had not asked for any form of ID. Surely, if as he stated in interview he thought he was selling a soft drink then he would have not felt that he should have needed to ask for ID. That fact that he never stated, in mitigation to officers at the premises, at the time that he thought he had sold a soft drink would also question his account in interview.

It is the belief of West Midlands Police that this account given in interview does not stand up to any sort of scrutiny.

It is West Midlands Police stance that the DPS and Premises Licence Holder has at the very best, failed in his responsibility to ensure his staff had been sufficiently trained & competent in the sale of alcohol on his behalf and at the very worst been totally complicit in allowing the sale of alcohol to children given the intelligence since January 17 and time scale of previous visits by Trading Standards to the premises.

Regards

Chris Jones 55410

Birmingham Central Licensing Team

West Midlands Police HQ
Lloyd House
Colmore Circus
Birmingham
B4 6NQ



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Appendix 2

Head of Licensing, Birmingham City Council, Licensing Section, P.O. Box 17013,
Birmingham, B6 9ES

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 Neil Donovan (on behalf of Donna Bensley Chief Inspector of Weights & Measures)

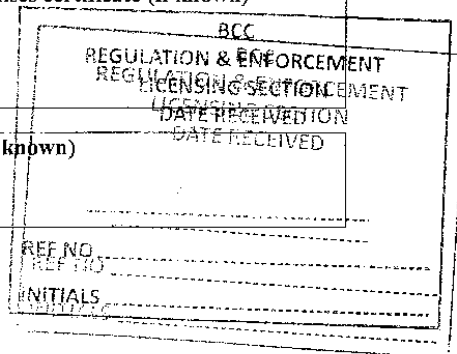
(Insert name of applicant)

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 **COSTCUTTER**

Postal address of premises or, if none, ordnance survey map reference or description	
Costcutter 442-444 Birchfield Road	
Post town Birmingham	Post code (if known) B20 3JG

Name of premises licence holder or club holding club premises certificate (if known) Mr Waheed Khan
Number of premises licence or club premises certificate (if known) 3232



Part 2 – Applicant details

I am

Please tick ☒ yes

1) an individual, body or business which is not a responsible
authority (please read guidance note 1, and complete (A)
or (B) below)

☐

2) a responsible authority (please complete (C) below)

☒ yes

3) a member of the club to which this application relates

☐

(please complete (A) below)

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick ✓ yes

Mr ☐ Mrs ☐ Miss ☐ Ms ☐ Other title
(for example, Rev)

Surname

First names

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)**

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

(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 Neil Donovan, Enforcement Officer for and on behalf of Donna Bensley Chief Inspector of Weights & Measures. Birmingham City Council Trading Standards PO Box 16586 Birmingham B33 3EH In all correspondence please quote our reference: 8747432
Telephone number (if any)
E-mail address (optional)

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

- | | |
|---|---------------------------------|
| | Please tick one or more boxes ✓ |
| 1) the prevention of crime and disorder | ✓ |
| 2) public safety | |
| 3) the prevention of public nuisance | ✓ |
| 4) the protection of children from harm | ✓ |

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

In January 2017 Birmingham Trading Standards received intelligence from a member of the public that a shop known as Booze Stop/Costcutters, 442-444 Birchfield Road, Birmingham, B20 3JG was selling alcohol to persons under the age of 18; in this case the complainants' son who was 16.

It is an offence to sell cigarettes and alcohol to persons under 18 years of age.

Consequently an advisory visit was made to the shop on 11 January 2017 by Trading Standards Enforcement Officer Paul Ellson. On this visit Officer Ellson issued an advice notice to the trader numbered 12307. The notice stated amongst other things; *"This department has received information that alcohol was sold to a person under 18yrs old. This must cease. Test purchase may be made to ensure compliance"*. The trader signed for this notice and was given a copy.

Subsequently on 28 July 2017 Birmingham Trading Standards Service undertook a test purchase exercise with a 14 year old female volunteer.

At approximately 12.30 pm. the volunteer went into Costcutter. Trading Standards Officer Martin Williams followed a few paces behind in order to witness what occurred.

The volunteer went to the rear of the shop and picked up a 700ml bottle of 4% alcohol WKD Blue vodka drink and took it to the counter. Here she presented it to middle aged man who was behind the counter. The man did not ask her age or ask for any identification but just said; *"£2.99"*.

The volunteer paid her then left the premises with the bottle of alcohol.

A few minutes later Officer Williams returned to the shop with local police officer Chris Jones and spoke to the same man behind the counter, he gave his name as Zafar Iqbal. Despite at first denying it he then admitted he had sold the alcohol to the young volunteer and had not asked her age or for any ID.

Officer Williams explained to him that the sale could constitute an offence under the Licensing Act 2003 and that the facts would be reported.

Zafar Iqbal was issued with a trader's notice to this effect which he duly signed.

On 7 September 2017 Officer Donovan formally interviewed Waheed Khan who is both the Premises Licence Holder and Designated Premises Supervisor. Following that he also interviewed the fellow partner in the business Nazabit Khan about the events of 28 July 2017. The interviews were conducted under caution in accordance with The Police and Criminal Evidence Act 1984. Both men were interviewed separately.

In the interviews both men advised that Zafar Iqbal had recently left the business due to the stress of this and the fact that he did not feel he could do the job. He had apparently been trained and training records were shown to Officer Donovan.

On 21 September 2017 Officer Donovan formally interviewed the seller, Zafar Iqbal, about the events of 28 July 2017. The interview was conducted under caution in accordance with The Police and Criminal Evidence Act 1984.

In the interview Mr Iqbal confirmed he had recently left the business due to the stress of the sale and the fact that he did not feel he could do the job, he also confirmed that he had received relevant training. Mr Iqbal went on to say that he genuinely thought the WKD was a soft drink and that his normal role in the shop was to stack shelves but on this occasion a colleague had gone out to get some lunch and he was covering for him.

This does appear to show that he should not have been left in charge in the shop on his own with little or no experience.

It is felt that the Premise Licence Holder has failed in his responsibility to ensure that staff left on their own are confident in the role they undertake. Clearly Mr Iqbal felt that he was unable to do the job and did not recognise an alcohol product.

We therefore request a review to consider all options open to Committee. If revocation is not deemed appropriate we would recommend additional conditions especially requiring a Personal Holder is on the premises at all times.

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

The premise has had previous issues in relation to complaints relating to alcohol.
The previous history of shop is as follows;

Previous to this in January 2014 an anonymous complaint was made to Trading Standards that the shop was selling counterfeit cigarettes and alcohol. On the 13 February 2014 a visit and inspection was conducted and 12 bottles of 1 litre Glens, 11 bottles of 70 cl Glens, 1 bottle of 35cl Glens and 11 bottles of 100cl Bacardi was seized and detained. On the 12th August 2014 Mr Mohammed signed a caution and was given a pack on preventing illegal sales.

The current DPS/PLH only came into effect from the 12 July 2017, however the above does show the history of the premises.

In view of this sale and previous history it is considered appropriate to seek a review of the licence with a recommendation that it be revoked. Selling alcohol to children is a very serious matter and is in breach of the licensing objectives. It is a criminal offence. Equally being found in possession of illicit goods is also a criminal matter and dealing in such goods brings crime into neighbourhoods and could also have an impact on the purchasers' health as dealing in illicit goods, without knowing the provenance could result in unsafe products being supplied.

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

Please tick ✓ yes
No

If yes please state the date of that application

Day		Month		Year	
1	1	1	1	1	1

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

N/A

Please tick ✓ yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate ✓
- 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

..... 28/11/2017

Capacity

..... ENFORCEMENT OFFICER

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6)	
Post town	Post Code
Telephone number (if any)	
If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)	

Notes for Guidance

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.

Appendix 3

BIRMINGHAM CITY COUNCIL

LICENSING ACT 2003

PREMISES LICENCE

Premises Licence Number:

3232 / 3

Part 1 - Premises details:

Postal address of premises, or if none, ordnance survey map reference or description Costcutter 442-444 Birchfield Road Perry Barr	
Post town: Birmingham	Post Code: B20 3JG
Telephone Number:	

Where the licence is time limited the dates N/A

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

The times the licence authorises the carrying out of licensable activities			
Monday - Sunday	00:00	-	23:59 M2

The opening hours of the premises			
Monday - Sunday	00:00	-	23:59

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

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Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence Mr Waheed Khan	
Post town:	Post Code:
Telephone Number:	
Email	

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

Name, address, telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol Mr Waheed Khan	
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	Issuing Authority

Dated 12/07/2017

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 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.

(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.

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Annex 2 – Conditions consistent with operating schedule

2a) General conditions consistent with the operating schedule

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

Conditions as stated below under the appropriate licensing objective.

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

The licence holder shall install and maintain internal and external CCTV, recordings of which are to be retained for thirty one days.

There will be external frontage roller shutters and the premises will be fully alarmed.

The licence holder shall ensure that any staff involved in the sale of alcohol are fully aware of their responsibilities under the Licensing Act 2003.

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

The licence holder shall ensure the premises will have fully maintained firefighting equipment on site with a maintenance contract along with emergency lighting and smoke detectors.

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

Internal and particularly external CCTV will act as a deterrent in the terms of any anti - social activities regarding the outlet's frontage and the immediate vicinity of the premises.

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

The licence holder shall ensure the layout of the shop will give consideration to the prevention of children accessing alcohol and any alcohol displayed will not be obstructed from the view of the sales assistants.

The premises will operate a proof of age scheme via acceptable forms of identification and incorporate 'The Challenge 21' system.

The licence holder shall ensure a sales refusal book will be fully maintained at the premises at all times.

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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

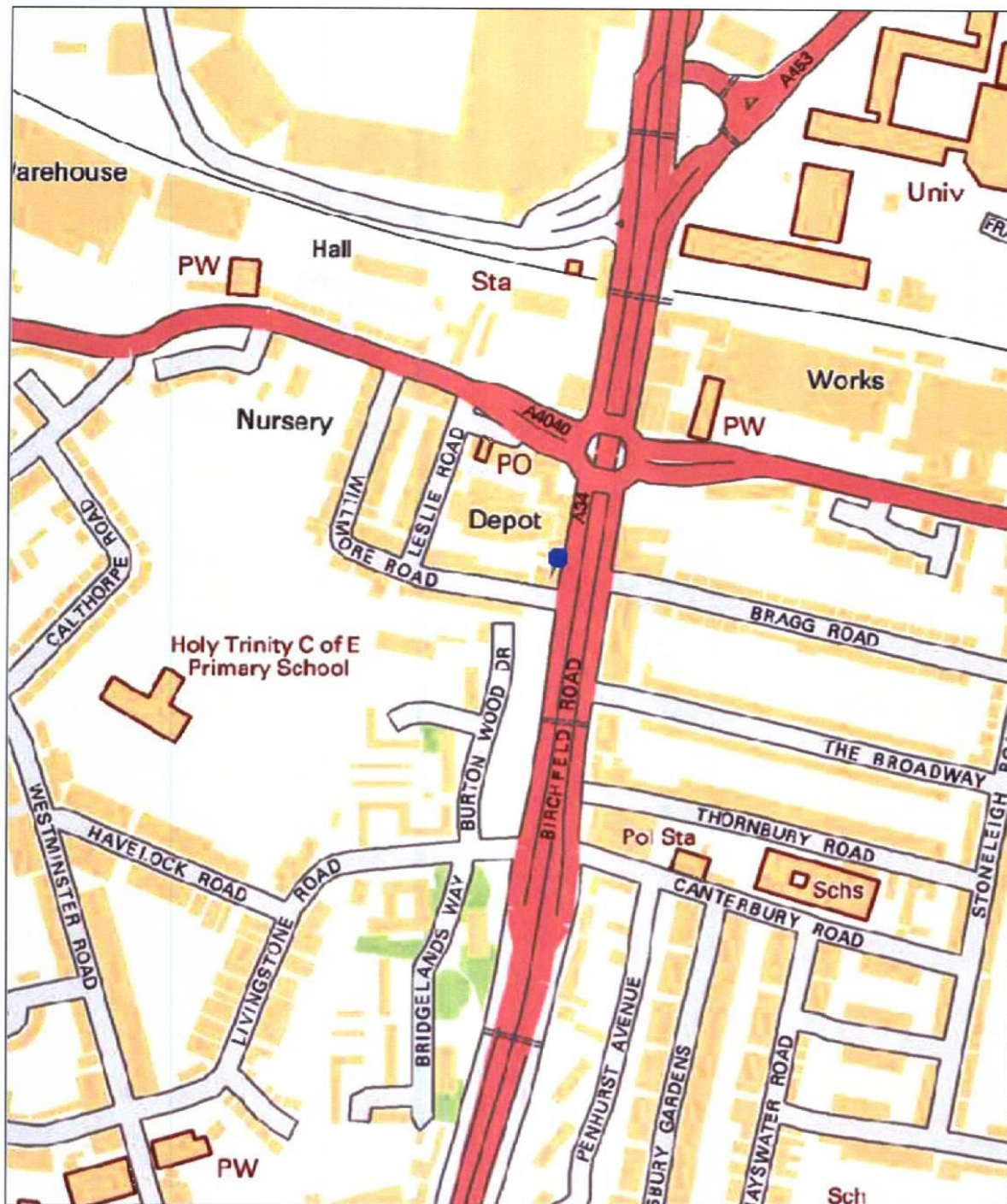
N/A

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Annex 4 – Plans

The plan of the premises with reference number **101912-3232/3** 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.

Appendix 4



Birmingham City Council Map Created By:

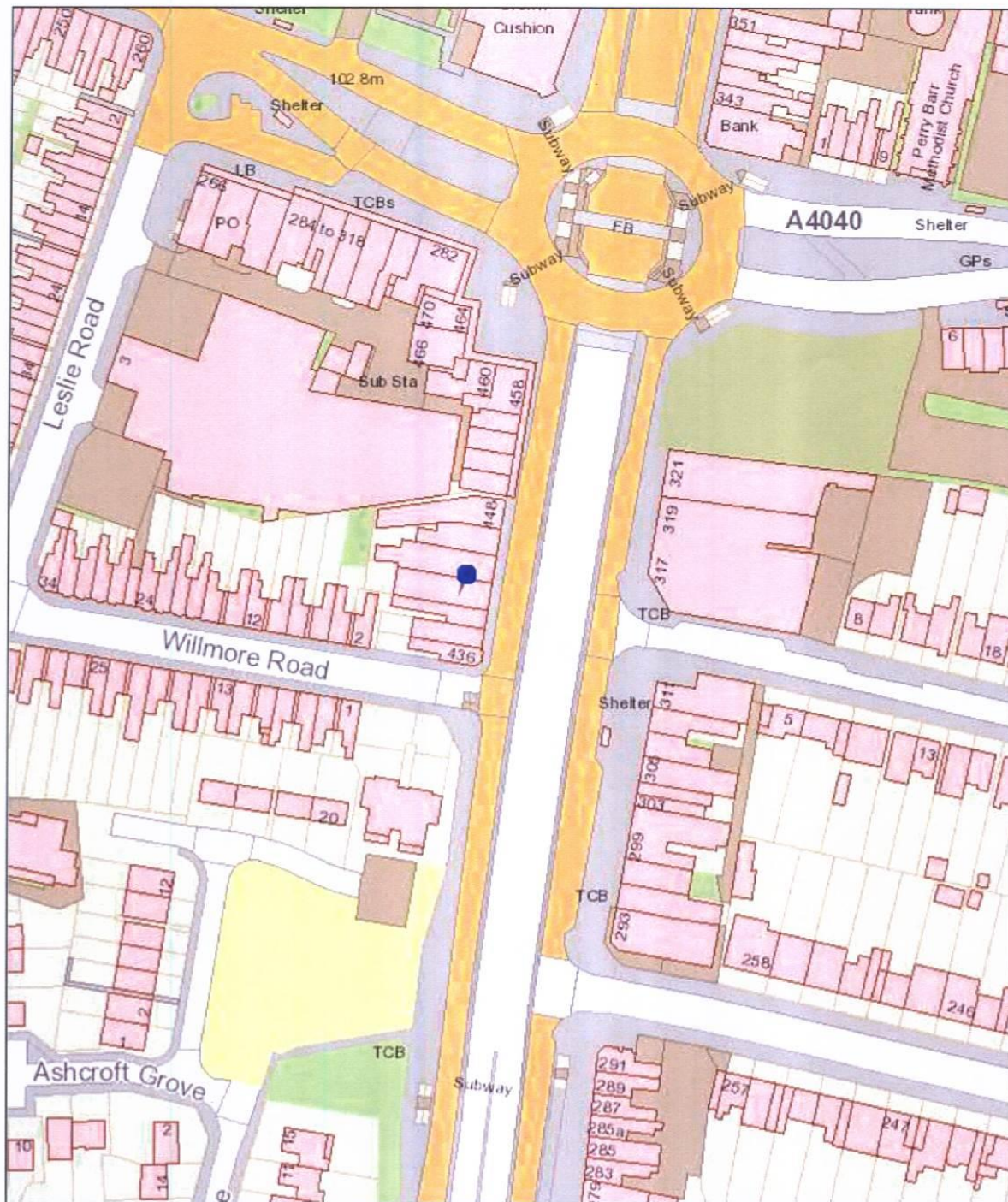
Notes

Date of Map Creation: 02/01/2018



Scale:
1:4,000

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Birmingham City Council Map Created By:

Notes

Date of Map Creation: 02/01/2018



Scale:
1:1,250

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