



**BIRMINGHAM CITY COUNCIL**

**LICENSING SUB COMMITTEE C**

**WEDNESDAY 12 AUGUST 2020**

**Foodstars, 31-32 Manchester Street, Birmingham,**  
**B6 4HL**

That the application by Foodstars BH Ltd for a premises licence in respect of Foodstars, 31-32 Manchester Street, Birmingham, B6 4HL **BE GRANTED IN PART, IN THAT THE APPLICATION FOR THE PROVISION OF LATE NIGHT REFRESHMENT IS GRANTED, BUT THE APPLICATION FOR THE SALE OF ALCOHOL IS REFUSED.**

Those matters detailed in the operating schedule and the relevant mandatory conditions under the Licensing Act 2003 will form part of the licence issued.

In reaching this decision, the Sub-Committee was mindful of the promotion of the licensing objectives in the Act, particularly the prevention of crime and disorder, the prevention of public nuisance, and the protection of children from harm.

The Sub-Committee's reason for refusing the part of the application relating to the sale of alcohol was due to concerns expressed by West Midlands Police, regarding the degree of control and accountability that the applicant company would have in terms of the Foodstars delivery service, which would allow customers to order alcohol to be delivered to their homes starting at 11.00 hours, throughout the day, and until 23.00 hours.

The Police objections were outlined in full in the Report. In addition, the Police attended the meeting to address the Sub-Committee directly, and explained that the food and/or kitchen element of the delivery operation was not the issue; the concern was the accountability once alcohol left the premises. The proposed drivers who would be undertaking the deliveries were not employees of the company; they would be self-employed individuals. In this regard, the Foodstars operation would be entirely different from alcohol deliveries offered by, for example, supermarkets; supermarket delivery drivers are employees of that company.

The use of self-employed drivers created difficulties in terms of enforcement under the Act, regarding sales of alcohol to drunk persons, and/or to children. There would be no accountability whatsoever for these offences under the Act. As a result, the Police had requested that the arrangement should be that the drivers would be employees of the applicant company; the applicant company had declined that. An alternative course was proposed by Police, namely a 24 hour delay in between order and delivery; that was also declined by the applicant company. This was very unfortunate, as these were sensible precautions which would have given the Sub-Committee confidence, such that the application might have been granted.

The Sub-Committee found the application for provision of late night refreshment to be satisfactory. As regards the sale of alcohol, the Sub-Committee carefully considered the operating schedule put forward by the applicant company and the likely impact of the application, but were not persuaded that either the applicant or the proposed operation of the premises were capable of upholding the licensing objectives when offering alcohol for home delivery. The lack of control and accountability were unacceptable. The remarks of those representing the applicant company, relating to “training” for the self-employed drivers, did not reassure the Sub-Committee at all; the Police had already observed that these individuals would not be employees.

The Sub-Committee gave consideration to whether any measures could be taken to ensure that the licensing objectives could be adequately promoted and that therefore the licence might be granted for sales of alcohol; however Members considered that neither reducing the permitted hours nor refusing the proposed Designated Premises Supervisor would address the concerns raised by West Midlands Police relating to control and accountability. The Sub-Committee therefore resolved to grant only the part of the application relating to the provision of late night refreshment.

The Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued under Section 182 of the Licensing Act 2003 by the Secretary of State, the information contained in the application, the written representations received and the submissions made at the hearing by the applicant and by West Midlands Police.

All parties are reminded that under the provisions contained within Schedule 5 to the Licensing Act 2003, there is the right of appeal against the decision of the Licensing Authority to the Magistrates' Court, such an appeal to be made within twenty-one days of the date of notification of the decision.