

From: Craig Baylis

Sent: 20 November 2020 12:06

To: Bhapinder Nandhra

Cc: Abdool Rohomon

Subject: Licensing Act 2003 (Grant) RE: Foodstars, 31-32 Manchester Street, Aston, Birmingham, B6 4HL

Legal submission on behalf of the applicant

1. The Police submissions and reasons for their objections in relation to delivery have been seen and noted.
2. Our submission is that the Police objection is wrong as a matter of law and despite their best intentions cannot be permitted as a lawful interpretation of the provisions of Section 151 Licensing Act 2003 in relation to delivery of alcohol and in particular their concerns regarding that delivery to children.
3. The starting point is the Police submission that they would be content with the application if a condition were to be added to the licence to allow delivery of alcohol **only** in circumstances where the products are delivered by staff directly employed by the company, or alternatively if delivery were to be delayed for 24 hours if a 3rd party delivery company were to be used to deliver the alcohol. In other words, they seek to have deliveries of alcohol constrained in certain circumstances in connection with deliveries received by under 18's.
4. The concern of the Police relates to potential delivery of alcohol directly to children under the age of 18.
5. The relevant legislation is set out at section 151 of the Act which creates the offence of delivering alcohol to children. Section 151 says

151 Delivering alcohol to children

(1) A person who works on relevant premises in any capacity, whether paid or unpaid, commits an offence if he knowingly delivers to an individual aged under 18—

(a) alcohol sold on the premises, or

(b) alcohol supplied on the premises by or on behalf of a club to or to the order of a member of the club.

(2) A person to whom subsection (3) applies commits an offence if he knowingly allows anybody else to deliver to an individual aged under 18 alcohol sold on relevant premises.

(3) This subsection applies to a person who works on the premises in a capacity, whether paid or unpaid, which authorises him to prevent the delivery of the alcohol.

6. Ostensibly therefore an offence might be committed by the premises licence holder or a person employed by the holder if they knowingly permitted deliveries to take place to children.

7. However Section 151(6) provides a number of exceptions to the commission of a potential offence under subsection 1. Section 151(6) provides (my emphasis in bold)

(6) Subsections (1), (2) and (4) do not apply where—

(a) the alcohol is delivered at a place where the buyer or, as the case may be, person supplied lives or works, or

(b) the individual aged under 18 works on the relevant premises in a capacity, whether paid or unpaid, which involves the delivery of alcohol, or

(c) the alcohol is sold or supplied for consumption on the relevant premises.

8. The exception is simple and clearly stated. No offence under section 151(1) is committed in circumstances where the delivery of alcohol is received by a person under 18 where the delivery takes place at the buyer's home or place of work.

9. It is clear that Parliament never intended home deliveries to be caught, in any circumstances, by the rule preventing delivery to under 18's. There are no caveats in the legislation about how home deliveries are to be made, nor by whom, nor in what circumstances they can be made. The exception is simple and clear. Any delivery, **by any person**, to a person under 18 is lawful and incapable of prosecution, provided it is made at the home or place of work of the purchaser.

10. The Police are effectively seeking to constrain Parliament and the legislation by putting their own "spin" on how deliveries to under 18's might be made and in what circumstances. This is an unlawful approach to the legislation. The effect of what the Police are seeking is to amend the legislation to make it more onerous for delivery companies to make deliveries, where a person under 18 is the recipient of the delivery. This is not supported by the wording of the legislation which is clear and unambiguous.

11. Whilst we appreciate that the Police might have the best intentions they cannot change the law to make it more convenient for themselves to enforce. They must accept that delivery by any person in these circumstances is lawful, and their suggested conditions would be unlawful and incapable of enforcement.

12. It would be perfectly possible to deal with the concerns of the Police, if justified, by the review process rather than criminal prosecution.

13. In addition we are aware that a number of licences have been granted in Birmingham permitting delivery without the conditions that the Police seek in this case. If the Police concerns are justified we would expect them to be monitoring those premises closely and to bring review proceedings where there is evidence that the licence is being abused. We know of no such proceedings having been brought, nor concerns having been expressed about their methods of operation.

14. These submissions do not mean that the applicant is ignorant of the dangers of alcohol and children. They have developed procedures which we will explore at the hearing to ensure that every care is taken on a practical level to ensure that alcohol and children don't mix, when deliveries are made.

15. The applicant has been granted 2 licences for exactly this type of operation elsewhere in the country with no conditions similar to those sought by the Police in this case.

16. I have acted for a number of clients throughout the country who have been granted delivery licences such as this and I know of no other Police authority which seeks conditions similar to these anywhere else.



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