



West Midlands Police objection to grant –
Foodstars, 31-32 Manchester Street, Birmingham, B6 4HL

PAGE(S)	DOCUMENT(S)
1 to 2	Decision notice – Licensing Sub Committee C 12th August 2020
3	Section 141 LA 2003
4	Section 146 LA 2003
5	Section 151 LA 2003
6 to 7	Email around conditions



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.

D 12139

Licensing Act 2003 - sale of alcohol to a person who is drunk

NARRATIVE

Section 141 of the Licensing Act 2003 creates an offence in relation to the sale of alcohol to a person who is drunk.

141(1) A person to whom subsection (2) applies commits an offence if, on relevant premises, he knowingly

- (a) sells or attempts to sell alcohol to a person who is drunk, or
- (b) allows alcohol to be sold to such a person.

141(2) This subsection applies -

- (a) to any person who works at the premises in a capacity, whether paid or unpaid, which gives him authority to sell the alcohol concerned,
- (b) in the case of licensed premises, to -
 - (i) the holder of a premises licence in respect of the premises, and
 - (ii) the designated premises supervisor (if any) under such a licence,
- (c) in the case of premises in respect of which a club premises certificate has effect, to any member or officer of the club which holds the certificate who at the time the sale (or attempted sale) takes place is present on the premises in a capacity which enables him to prevent it, and
- (d) in the case of premises which may be used for a permitted temporary activity by virtue of part 5, to the premises user in relation to the temporary event notice in question.

141(3) This section applies in relation to the supply of alcohol by or on behalf of a club to or to the order of a member of the club as it applies in relation to the sale of alcohol.

141(4) *penalty only - see below*

MODE OF TRIAL AND PENALTY

Summary: fine not exceeding level 3 on the standard scale
Also consider penalty notice for disorder

POWERS OF ARREST

Arrest without warrant

SOURCE(S)

Licensing Act 2003

RELATED MATERIAL

141 Sale of alcohol to a person who is drunk

RELATED CASES

Ross v Moss and others 1965
Meaning of the term 'knowingly'

D 12143

Licensing Act 2003 - sale of alcohol to children

NARRATIVE

Section 146 of the Licensing Act 2003 creates the offence of selling alcohol to children.

146(1) A person commits an offence if he sells alcohol to an individual aged under 18.

146(2) A club commits an offence if alcohol is supplied by it or on its behalf -

- (a) to, or to the order of, a member of the club who is aged under 18, or
- (b) on the order of a member of the club, to an individual who is aged under 18.

146(3) A person commits an offence if he supplies alcohol on behalf of a club -

- (a) to, or to the order of, a member of the club who is aged under 18, or
- (b) to the order of a member of the club, to an individual who is aged under 18.

146(4) Where a person is charged with an offence under this section by reason of his own conduct it is a defence that -

- (a) he believed that the individual was aged 18 or over, and
- (b) either -
 - (i) he had taken all reasonable steps to establish the individual's age, or
 - (ii) nobody could reasonably have suspected from the individual's appearance that he was aged under 18.

146(5) For the purposes of subsection (4), a person is treated as having taken all reasonable steps to establish an individual's age if -

- (a) he asked the individual for evidence of his age, and
- (b) the evidence would have convinced a reasonable person.

146(6) Where a person (**the accused**) is charged with an offence under this section by reason of the act or default of some other person it is a defence that the accused exercised all due diligence to avoid committing it. (*see note below*)

146(7) *penalty only - see below*

Note

Section 146(6) provides a further defence in circumstances where the act or default which led to the accused being charged was by someone other than the person charged with the offence (for example, where the manager of a pub is charged with the offence although the actual sale was made by a barman) if the person charged exercised all due diligence to avoid committing the offence.

MODE OF TRIAL AND PENALTY

Summary: fine

Also consider [penalty notice for disorder](#)

Note

Note that for offences committed since 12 March 2015, [section 85](#) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 removes the limits on certain fines given by the Magistrates' Courts. Offences that were previously punishable by fines of 'prescribed sums' and that were limited to 'not exceeding level 5 on the standard scale' or 'not exceeding the statutory maximum', are now punishable by a fine of any amount.

POWERS OF ARREST

D 12148

Licensing Act 2003 - delivering alcohol to children

NARRATIVE

Section 151 of the Licensing Act 2003 creates the offence of delivering alcohol to children.

151(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.

(See note (i) below)

151(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.

151(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.

151(4) A person to whom subsection (5) applies commits an offence if he knowingly allows anybody else to deliver to an individual aged under 18 alcohol supplied on relevant premises by or on behalf of a club to or to the order of a member of the club.

151(5) This subsection applies -

- (a) to a person who works on the premises in a capacity, whether paid or unpaid, which authorises him to prevent the sale, and
- (b) to any member or officer of the club who at the time of the supply in question is present on the premises in a capacity which enables him to prevent the supply.

151(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.

(See note (ii) below)

151(7) *penalty only - see below*

NOTES

(i) This offence would cover, for example, circumstances where a child takes delivery of a consignment of alcohol bought by his father from an off-licence (in a case where the exceptions mentioned below do not apply).

(ii) Subsection (6) provides that the offences in this section are not committed if the alcohol is delivered to the home or place of work of the purchaser or person who is supplied (for example, where a child answers the door and signs for the delivery of his father's order at his house), nor where the job of the minor who took delivery of the alcohol involves delivery of alcohol (for example, where a 16 year old office worker is sent to collect a delivery for his employer), nor where the alcohol is sold or supplied for consumption on the relevant premises.

MODE OF TRIAL AND PENALTY

Summary: fine


Abdool Rohomon

From: [REDACTED]
Sent: 20 October 2020 17:35
To: Abdool Rohomon
Subject: [External]: RE: Foodstars - Manchester Street, Birmingham

CAUTION: This email originated from outside of West Midlands Police. Do not click links or open attachments unless you are sure the content is safe.

Thanks for your email Abs

As previously discussed we cannot accept the proposed conditions which we view as being unlawful when considered in the context of section 151(6) Licensing Act 2003.

BRYAN
CAVE
LEIGHTON
PAISNER 

CRAIG BAYLIS
Partner
BRYAN CAVE LEIGHTON PAISNER LLP - London, UK
[REDACTED]

COVID-19: UK CONTRACTUAL DISPUTES FAQs ▶

BCLP London has moved office,
Governor's House, 5 Laurence Pountney Hill, London EC4R 0BR

From: Abdool Rohomon [mailto:[REDACTED]]
Sent: 20 October 2020 10:28
To: Craig Baylis
Subject: Foodstars - Manchester Street, Birmingham

Dear Mr Baylis,

Thank you for your new application for the above premises. As you are aware we objected last time as two proposed conditions in relation to the sale of alcohol were not accepted by the applicant.

Whilst you have submitted a new application and not included either of the condition, it is only fair that we once again offer these as appropriate control measures for the sale of alcohol, indeed the licensing subcommittee in its decision notice even indicated that they were sensible precautions which would have given the Sub-committee confidence, such that the application might have been granted.

As such I will offer you these conditions again

Either –

- Drivers who are engaged in the delivery of alcohol will be direct employees of the applicant company, and trained by the applicant company in the licensing act 2003 or
- There will be a 24hr delay in between the ordering of alcohol and its delivery if a third party company are used

The last representation date is the 3rd November, I am off from next Wednesday, so if you can respond before the 27th it would be appreciated

Kind regards

Abs Rohomon. BEM

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

Internal : [REDACTED]
External : [REDACTED]

Follow us on Twitter - @brumcopslicensing

West Midlands Police
Tel. 101. Ext. [REDACTED]

Email: [REDACTED]
Website: www.west-midlands.police.uk
Twitter: www.twitter.com/brumpolice
Facebook: www.facebook.com/westmidlandspolice
YouTube: www.youtube.com/westmidlandspolice

Vision statement - Serving our communities, protecting them from harm

This email is intended for the addressee only and may contain privileged or confidential information. If received in error, please notify the originator immediately. Any unauthorised use, disclosure, copying or alteration of this email is strictly forbidden. Views or opinions expressed in this email do not necessarily represent those of West Midlands Police. All West Midlands Police email activity is monitored for virus, racist, obscene, or otherwise inappropriate activity. No responsibility is accepted by West Midlands Police for any loss or damage arising in any way from the receipt or use of this email.

Bryan Cave Leighton Paisner LLP

Governor's House, 5 Laurence Pountney Hill, London EC4R 0BR, UK
DX 92 London/Chancery Lane
t: +44 (0)20 3400 1000 f: +44 (0)20 3400 1111 w: www.bclplaw.com

This email is from a law firm. It is confidential and may be covered by legal privilege. If you have received this email in error, please notify us immediately and delete it (including any attachments). You should not disclose its contents to any other person. We may monitor and record electronic communications in accordance with applicable laws and regulations. Where appropriate, we may also share certain information you give us with our other offices (including in other countries) and select third parties. For further information (including details of your privacy rights and how to exercise them), see our updated Privacy Notice at www.bclplaw.com.

Bryan Cave Leighton Paisner LLP is a limited liability partnership registered in England and Wales (registered number OC315919) and a member of the BCLP Group (a "BCLP Firm") authorised and regulated by the Solicitors Regulation Authority. A list of partners is open to inspection at its registered office: Governor's House, 5 Laurence Pountney Hill, London EC4R 0BR, UK. Within the BCLP Group, 'partner' is used to refer to a member, or an employee or consultant with equivalent standing and/or qualifications as required, of the BCLP Firm in which they practise. In the US, all our partners are members. For further information, see our website legal notices (www.bclplaw.com).

This email has been scanned by the Symantec Email Security.cloud service.