

BIRMINGHAM CITY COUNCIL

**LICENSING
SUB-COMMITTEE C
12 AUGUST 2020**

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 12 AUGUST 2020 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Mike Leddy in the Chair;

Councillors Martin Straker-Welds and Nagina Kauser.

ALSO PRESENT

David Kennedy – Licensing Section
Joanne Swampillai – Legal Services
Katy Townshend – Committee Services

(Other officers were also present for web streaming purposes but were not actively participating in the meeting)

NOTICE OF RECORDING/WEBCAST

1/120820 The Chairman advised, and the Committee noted, that this meeting would be webcast for live or subsequent broadcast via the Council's Internet site (www.civico.net/birmingham) and that members of the press/public would record and take photographs except where there are confidential or exempt items.

2/120820 DECLARATION OF INTERESTS

Members were reminded that they must declare all relevant and pecuniary and non-pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations will be recorded in the minutes of the meeting.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/120820 Apologies were submitted on behalf of Neil Eustace and Councillor Nagina Kauser was the nominated Member.

**LICESNING ACT 2003 PREMISES LICENCE – GRANT – FOODSTARS, 31 - 32
MANCHESTER STREET, BIRMINGHAM, B6 4HL**

Report of the Interim Assistant Director of Regulation and Enforcement was submitted:-

(See document No. 1)

On Behalf of the Applicant

Seniha Gazioglu – Account Manager – Foodstars

Vero Bolognese – Head of Operations

Alistair Taylor – Head of Growth

Those Making Representations

PC Abdool Rohomon – West Midlands Police (WMP)

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The Chairman introduced the Members and officers present and the Chair asked if there were any preliminary points for the Sub-Committee to consider.

The Chairman then explained the hearing procedure prior to inviting the Licensing Officer, David Kennedy to outline the report.

Afterwards, the Chairman invited the applicant to make their submission. At which stage Seniha Gazioglu, made the following points on behalf of the applicant: -

- a) That she was the Account Manager for Foodstars; which were a 'delivery only' company who rent out kitchen services. The food companies can then prepare and deliver food to homes, offices and more.
- b) The premises would not be open to the public and there would be internal and external cameras around the building.
- c) The premises could hold around 40 kitchens.
- d) The demand for online retail due to Covid-19 had created an opportunity to adapt to meet the current demand. It was a more affordable alternative to the high street.
- e) Employment has increased due to the volume of kitchens.
- f) The customer had lots of online options; people were more likely to stay at home and this business would eliminate the need to go out for food.

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- g) The idea is that the restaurants can have a kitchen in the premises, and they will be delivering restaurant quality food to people's homes or offices. They wanted to re-create the restaurant experience at home for customers.
- h) People can order from their favourite restaurants and enjoy a glass of wine, without having to leave the comfort of their homes.
- i) That profits would come from alcohol; therefore, it was necessary to be able to pair food with alcohol and would help businesses survive in these uncertain and difficult times.
- j) They would only sell alcohol if food was being ordered. They would not accept orders that contained just alcohol.
- k) Many online retailers were using 'Deliveroo' and they were trying to create a fair platform for restaurants to adapt their businesses.
- l) They had agreed terms with the Council and would work closely with responsible authorities to ensure compliance and a model that could be used for other businesses.
- m) When the premises take the alcohol off the shelf and bag it for delivery the sale is made, and the buyer and seller relationship remains unchanged. The courier is simply facilitating the order.
- n) The online retailer is responsible for the goods being dispatched from the unit, same as a sweater.
- o) The orders are received directly at each kitchen, where their own staff will hand the items for delivery to the driver. This offers another layer of protection as the bags will be checked and the packages will also be labelled.
- p) The delivery driver has to check the age of the person receiving the order. They must enter the date of birth/age of that person and the premises will be overseeing all transactions.
- q) The police did propose that if delivery companies were to be used then delivery should take place at least 24 hours after the order took place, however they would not agree to this condition since many other restaurants did not have to do that and therefore, they felt it was unfair.
- r) They did not feel that their 'offerings' would appeal to under age or vulnerable persons since they would only be able to get alcohol if they ordered food. Which would reduce the risk of people trying to obtain booze.
- s) They would primarily only be selling fine wines and beers.

In answer to Members questions Vera Bolognese made the following points: -

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- a) They trained staff to level 2 and level 3 – which included how to handle alcohol safely. They already had refresher training in place and would be well equipped to handle requests without issues.
- b) The software gave them the ability to see orders and check them in real time.
- c) They created a relationship with drivers, offering them refreshments and they were able to use the facilities. They wanted to keep the drivers happy and continue to create good relationships with them.
- d) They worked with drivers to ensure they understood the expectations and followed the correct procedures. They would be reminded every single time they took a delivery that they must carry out age checks.
- e) If it came to their attention that alcohol was being sold without food, they had a procedure in place and would be extremely tough on licensees. If they failed to comply with the procedures, they would be fined and not allowed to sell alcohol again.

In response to questions from Members Seniha Gazioglu, made the following points on behalf of the applicant: -

- a) No active advertising would take place in relation to alcohol.
- b) That it was a premium offering and therefore had relatively high price points, so would be attracting young professionals, or families due to the nature and style of the restaurants they partnered with.
- c) They had agreed to be fully transparent with the Council and were happy to provide records of transactions and refusals so they could review the documents.
- d) CCTV recordings would be kept for 31 days and they would also have an incident log.
- e) That she could provide visuals of the ID checks so Members could understand. There is a declaration page when people get to the checkout and then when the driver gets the delivery, they receive a notification reminding them that the order has an age restricted product which includes the law. When they arrived at the delivery address, they have a form to fill in the date of birth and age of the person in receipt of the goods. If the person is not over 18 then they won't be allowed the product and it is disposed of.
- f) That other operators were selling alcohol without food.
- g) The alcohol was premium and therefore would not be attractive for people who just wanted to get drunk.
- h) That they had prioritised both the alcohol and the late-night refreshment licence and 2am would allow the kitchens to operate for a longer amount of

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time and deliver dinner to people late at night. Alcohol would give them larger profit margins.

- i) Each individual kitchen would have a personal licence but the premises licence would be with them and they would be accountable and staff and drivers would be trained.

In answer to Members questions Alistair Taylor made the following points: -

- a) They had used a model that is already complaint, similar to supermarkets. They had just added a middle step and the final step of trained staff checking orders.
- b) They had control over the alcohol.
- c) They would not be employing their own drivers, instead they would be using a shared resource which would ensure the service was fully utilised.
- d) They would be using a large number of drivers as they anticipated over 100,000 orders per week.
- e) That they couldn't do much about people deliberately trying to break the law. There had to be some reliance on individuals that they wouldn't do that, they would take every step to stop it happening, but if people were deliberately fraudulent then they couldn't prevent that.
- f) They did not have a minimum spend on orders to buy alcohol.
- g) They would be selling all kinds of foods; the premises would be occupied by 40 different kitchens.
- h) People could make multiple orders.
- i) They had ultimate control over the individual kitchens.
- j) Staff would be checking all orders.
- k) The average preparation time for food orders is 12 minutes.
- l) Items can be removed from the site.

PC Rohomon, on behalf of WMP, made the following points: -

- a) That they were concerned regarding the 'middle step' and as a result, the accountability over the alcohol.
- b) The responsibility was handed to the delivery drivers, who were not even employees of the company but just a third party.
- c) The companies who offered delivery drivers did not usually provide training to employees – it was relatively easy to become a delivery driver.

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- d) The premises would have no idea which driver would turn up, they may even get new drivers they had never met before.
- e) There were already growing problems with parties and unlicensed events going on. Alcohol was known for creating and causing crime and anti-social behaviour (ASB) therefore it needed controlling and accountability was a key point.
- f) That they asked the premises to use drivers that they employed.
- g) Supermarkets employed their own drivers, so there was more accountability.
- h) Under the Licensing Act premises should not be selling alcohol to drunks. However, because they would not be selling the alcohol on the premises, they passed the alcohol to the driver to deliver they wouldn't be committing an offence.
- i) At the point the alcohol leaves the premises, the sale is made. Therefore, the premises don't commit any offence if they sell to a drunk person and the driver doesn't commit an offence either as he was not selling the alcohol, only supplying it.
- j) PC Rohomon also referred to the Licensing Act in that the driver would not be committing an offence if they delivered alcohol to children because the alcohol was being delivered by a third party and not an employee of the premises.
- k) There were no guarantees that the premises would only sell premium alcohol.
- l) People could give the drivers false details such as date of birth.
- m) There was no accountability in terms of training, as the premises did not employ the drivers so there would be no guarantee that the drivers would be adequately trained in alcohol sales/delivery.
- n) That the 24-hour delay on orders or if the premises employed their own drivers reduced the risk.

Alistair Taylor asked PC Rohomon why other premises were using Deliveroo or similar delivery services with less control measures.

PC Rohomon confirmed he was not aware other premises were but would be carrying out inspections of the premises Alistair Taylor had mentioned.

In summing up, PC Rohomon on behalf of WMP made the following points: -

- That the proposed operation style had no control or accountability.
- There could be issues with alcohol delivery to drunks or minors and there would be no come back whatsoever.

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- The only way forward was for the premises to employ their own drivers, which could be put as a condition on the licence.

In summing up, Alistair Taylor, on behalf of the premises made the following points: -

- He thanked the committee for their time and advised that he had covered everything he wished to discuss.

At this stage the meeting was adjourned in order for the Sub Committee to make a decision and all parties left the meeting. The Members, Committee Lawyer and Committee Manager conducted the deliberations in private and decision of the Sub-Committee was sent out to all parties as follows: -

4/120820

RESOLVED:-

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

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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.

Please note, the meeting ended at 1150.