Re: Bristol City Council Licensing Sub-Committee

"Reasons for Decision" upon the application of Gallus Management Limited

Advice / Observations

The Licensing Committee of Bristol City Council published its written decision upon the above application on Friday 8th October 2010. The decision was first made orally on 1st September 2010.

There are a number of aspects of concern in relation to this decision, upon which I comment as follows:

1. The decision states that the licensing sub-committee ("LSC") was "particularly influenced" by those licensing objectives concerning the prevention of crime and disorder, public nuisance, public safety and the protection of children from harm. In view of the nature of the application and the area into which it fell, namely a Cumulative Impact Zone ("CIZ"), these issues were the *only* matters of substance which should have been of concern to the LSC. Those issues were paramount to, and determinative of, this application.

2. Insufficient regard was given to those objectives and/or they were wrongly interpreted and seemingly no regard at all was given to the protection of children from harm, upon which the remainder of the written decision appears silent.

3. The outcome of the representations made by the Fire Authority, Trading Standards and Pollution Control is expressed in such a way as to give the impression that those parties were in agreement with the application, thus leaving the police as the "one outstanding relevant representation". It is perhaps important to note that the police objection was the only one of those four which concerned the substance of the application in relation to the licensing objectives recited above. The three other parties were dealing with essentially technical issues which, once satisfied, could not form the basis of reasonable further objection.

4. The decision states that "no additional documentary information was produced on behalf of the police". Whether this is intended to stand as an implication that the police were not providing adequate evidence is unclear. However, the remark may reveal a misunderstanding of the nature of the presumption against granting the application. The fact that the premises is within the CIZ is evidence in itself for the police to rely upon. The presumption operates against the applicant, thus they should be the ones providing the evidence as to the *absence* of negative impact. The written decision of the LSC appears to accept that the burden rests upon the applicant:

   "licences will normally be refused […] unless it can be demonstrated by the applicant that [the premises] will not add to the cumulative impact…"

   The question thus appears to be whether the applicant is "demonstrating" in any evidential or objective form that their application *<u>will not</u>* add to the cumulative impact, or whether the assertions made by the applicant are mere (untested) rhetoric. Certainly no "evidence" appears to have been presented by the applicant. To some extent this is understandable, in the sense that the very nature of the establishment (*Hooters*) is such as to

make it virtually impossible to demonstrate that there will be no addition to the cumulative impact. Any assertion to that effect can be no more than a wishful prediction.

5. The brand *Hooters* is a franchise which by definition must appeal mainly to the younger elements of local society and males in particular. It is doubtful that the place would attract the elderly for example, in view of its whole ethos and the presence of multiple sports screens with their associated flashing screens and volume. Equally it is doubtful that the place genuinely attracts families with small children and, even if it does, that position ends at 9pm – leaving the next three hours open to another, more restricted, clientele. There is nothing in the decision to show that the LSC had actually researched the true operation of these premises in the UK or abroad, or that it called upon the applicant to provide that type of evidence. No suggestion is made that the applicant was asked any questions based upon material in the public domain via the internet. And yet there is the quotation of the claim that *Hooters* in Nottingham had operated over the years "without problems". There is no evidence for this at all. It was not a matter for the police to evidence any issues in Nottingham – it was a matter for the applicant to substantiate that claim. Further, no regard was paid to the location of the Nottingham premises and whether that is in a CIZ.

6. No apparent regard has been given to the predictable core clientele of the establishment. Even a cursory search of the material available (and which should have been made available to the LSC) reveals:

   - The promotion of the "sexy" attributes of the serving staff
   - The promotion of calendars and materials for sale centring upon those same attributes
   - Bikini competitions

- The promotion of stag nights; a stag party organising website is already known to have started advertising the imminent arrival of *Hooters* to Bristol as "good news"
- The sale of infant clothing bearing slogans such as "I'm a boobs man" and "Does my butt look big in this?"
- The overall accentuation of appeal to the same evident constituency as magazines such as *Loaded, Nuts* and *Zoo*.[1]

Further, any research on local newspaper stories about the plans to open in Bristol would have revealed hundreds of messages from local (predominantly male) readers making offensive remarks about breasts and female bodies and what it is to be either ugly or "fit" as the case may be.

7. The relevance of the above observations is twofold. Firstly, these easily obtainable pieces of information, coming almost exclusively from the *Hooters* website itself, are a means of obtaining *evidence* of the real operation of the franchise as opposed to the mere acceptance of the rhetorical claims put forward at the LSC hearing. Secondly, these pieces of information tend to show the likely core clientele of the establishment, whether at all times or after 9pm in particular. The decision therefore appears to have gone forward on an ill-informed basis and without due attention being given to the reality of the "attractions" of the place and predictable nature of the core clientele. This oversight, this failure of the LSC to contemplate the realities of the position, is an evident flaw at the heart of the decision making process. Furthermore, it is a flaw which later causes the LSC to confuse its duties in a CIZ, as will appear below.

[1] Whilst the evident sexism of the *Hooters* brand may not of itself provide a ground for objection within the licensing objectives, the failure of the LSC to seek more information as to the true scope of activities at the franchise has led it to give no apparent consideration as to whether these activities may cause harm to children.

8. It is stated in the decision that the "police maintained their application on policy grounds". It is not clear whether the LSC is implying that "policy grounds" in some way diminishes the force of the objection. Perhaps this is a "policy" objection which in some way does not reflect the real feelings of the objector? This implication at best does an injustice to the force of the police objection and, at worst, could be a conscious effort to make the police position appear as little more than a technicality which they were "only doing because they had to". The existence of the CIZ is of itself evidence of the social reality of the hard issues experienced by the police in terms of crime and disorder etc. This gives real and solid foundation to their objections based upon experience.

9. The central part of the decision is compromised by the flaw identified in paragraph 7, above – namely that the LSC made no enquiry into the available evidence which could have informed them as to the nature and intentions of the prospective core clientele. The LSC has thus purported to "distinguish" this type of premises from others by giving undue prominence to matters such as whether the clients mainly sit down or stand up and whether most of the activities take place at tables. They appear to have lost sight of the overarching issue at stake within a CIZ, namely the potential for crime and disorder presented by the drinking activities of, and the social attitudes of, the clientele that these broadly "young persons' culture" establishments attract. I mentioned in paragraph 4 above, that it was to some extent understandable that the applicant would not be able to provide evidence of no addition to cumulative impact. That is precisely because the place patently offers "more of the same" in general terms to the other premises in the CIZ. It is not, for example, a knitting shop or an organic café – the very point being that such places by *their* nature are virtually evidence within themselves that there could be no cumulative addition. The difficulty facing the applicant in this case was that the nature of the proposed premises is evidence within itself of the

likely cumulative addition. Accordingly, for the application to succeed, the nature of the place had to be distinguished from all the other premises of similar attraction within the area. The flaw at the heart of the LSC decision is that it has almost enthusiastically embraced that attempt to make distinctions and, in the process, it has lost sight of the bigger picture.

10. In order for this application to succeed it was necessary for the LSC to conclude that there was no meaningful risk of, in real terms, more groups of young people (for these purposes perhaps mainly men) visiting the area in order to (eat and) drink and then to spill out onto the surrounding area. Not being able to reach that conclusion without making distinctions, the LSC has concentrated upon the arrangements in place to secure good behaviour *inside* the premises. It has not given any apparent consideration to the effect on the area after the core clientele has left the premises. Whilst it is of course possible for fights to break out inside premises, it is self-evident that the main concern for disorder is the concentration of similar establishments in the same *area*. It is the effect upon the area that matters, not the decency of security inside and immediately outside the premises. It is of no great solace to those patrolling the CIZ that disorder may be contained or limited inside and immediately outside the front door. What matters is what happens around the corner and at large in the CIZ.

11. Thus one of the central faults at the heart of this decision is its concentration upon distinguishing fairly cosmetic aspects of the operation of the premises, concomitantly paying insufficient regard to the aims and objectives of licensing policy for the whole affected area.

12. The distinctions made by the LSC are largely in error, since most matters that they appear to have taken into account are irrelevant and not logically

connected to the CIZ issue. The decision appears to state that the place is "offering something different" because:

- It is American themed
- It shows sports on TV screens
- Children are welcome up to 9pm
- Service is by waiting staff
- No vertical drinking other than in limited circumstances
- The hours were "modest"
- It was "envisaged" that the premises would be more likely to attract those wanting a meal and to watch sports than binge drinking

It is hard to detect any other criteria set forward to distinguish the premises from others in the area.

Even cursory consideration of these "distinctions" reveals either that they do not exist as distinctions in reality, or that they have no logical connection to the CIZ issue:

- *American themed*. It is well known that there are other American themed premises in the area, selling mainly burgers and the like. However, the existence of a decorative or cosmetic theme appears wholly irrelevant. Were the place Irish, French or Paraguayan themed, the issue is the nature of the activity and the clientele, not the commercial selling point of the place. As already observed above, in any event the selling point is plainly designed to attract people with certain general attitudes to the "*Hooters* ideal".

- *Sports on TV screens.* It scarcely requires comment that vast numbers of bars in the area show sports on TV. The

"distinguishing" concept here is apparently that this is a café or restaurant showing sports on TV.

- *Children welcome up to 9pm*. No evidence was submitted as to how many children were expected in the business plan, presumably informed by the allegedly "problem free" Nottingham experience. No consideration was given as to what relevance this has to the position after 9pm. No investigation was made as to whether the sexualised nature of the establishment and its various promotions (as briefly mentioned in paragraph 6 above) might be considered harmful to children.

- *Service by waiting staff.* This happens in nearly all restaurants. And indeed in most of the bars-cum-eateries in the area.

- *No vertical drinking other than in limited circumstances.* There will in fact be vertical drinking, albeit that this will not be the most common position. There seems to be a proposition at large that drinking standing up is more likely to foster disorder than drinking sitting down. Again, the LSC misguides itself in concentrating only upon the capacity of the place to maintain order inside its own premises. The question as to what happens when customers leave, either having had a lot to drink, or by now in search of more drink, *Hooters* having attracted them to the area in the first place, is not discussed at all. Accordingly, the vertical drinking point, upon which some considerable emphasis is given, is evidence within itself of the undue prominence given to the inside, rather than the outside.

- *Modest hours.* The reference here is presumably to the fact that the place will shut at midnight. It will have been open on most days

for 17 hours. Quite what is modest about that might be open to question. However, no effort has been made to consider evidence as to the times that other places close. Plainly some close an hour later and in some cases two hours later on Saturday nights (eg *The Pitcher and Piano*). The decision of the LSC avoids any consideration of the interaction between those leaving *Hooters* and other licensed premises and thus, again, erroneously concentrates upon the internal aspects of the premises rather than its place in the overall picture of the CIZ.

- *More likely to attract those wanting a meal etc.* This very prediction demonstrates the uncertainty of the position; that the true likely impact is simply not known. Again, no consideration was given to the nature of the actual clientele likely to be attracted, nor as to interaction between the premises and the rest of the CIZ.

13. Overall, it is obvious that the *Hooters* brand has a very particular sexualised selling strategy which it strives to diminish or to some extent "mask" in various ways for the purposes of its licensing application(s). The promotion of "family friendly" concepts appears to have held some sway with the LSC and yet, as demonstrated above, this is in reality of no relevance to the application at all. The LSC has given no consideration to the other side of this particular coin, namely that many of the activities and promotions of the brand are distinctly family and child unfriendly. The name-dropping of *Frankie and Benny's* and *TGI Friday's* is another effort to establish a form of benign legitimacy, but the LSC has done nothing to ask itself whether those parallels are seriously appropriate bearing in mind that neither shares the very particular, sexualised, selling strategy of *Hooters*. Further, the very handling of the licensing application by reference to *Gallus Management* and with no public reference at that

stage to the *Hooters* brand, is of some revelation in itself of the controversial nature of the application.

14. For the above reasons, which are by no means exhaustive, I would advise that the LSC decision is eminently susceptible to challenge on appeal upon the grounds that:

    (1) The LSC has not upheld its key licensing objectives;

    (2) The LSC has made numerous factual errors in its interpretation of those objectives;

    (3) The LSC proceeded without obtaining appropriate evidence from the applicant and allowed mere assertions and predictions to go forward unchallenged as if they were "evidence";

    (4) The LSC misdirected itself as to its duties within the CIZ and reached a conclusion which cannot be sustained and which it could not have reasonably taken.