

BOROUGH COUNCIL OF KING'S LYNN & WEST NORFOLK

LICENSING COMMITTEE

**Minutes of a Meeting of the Licensing Committee held on
Tuesday 21st May 2013 at 6pm in the Committee Suite, King's Court,
Chapel Street, Kings Lynn**

PRESENT:

Councillors G Sandell (Chairman)
C Crofts (Vice-Chairman), R Groom, A Lovett, C Manning, M Pitcher,
D Tyler and T Wright.

By Invitation: Councillor A Lawrence, Portfolio Holder for Community
Councillor J Loveless

Apologies for absence were received from Councillors M Back, G Howman, M Langwade, C Sampson, L Scott and M Tilbury.

1. **URGENT BUSINESS**

There was none.

2. **DECLARATIONS OF INTEREST**

There were no declarations of interest.

3. **MEMBERS PRESENT PURSUANT TO STANDING ORDER 34**

Councillor J Loveless.

4. **MINUTES**

(i) The minutes of the full Licensing Committee meeting held on 7th August 2012 were confirmed as a correct record and signed by the Chairman.

(ii) The minutes of the Licensing Sub-Committee Hearings held on the following dates were confirmed as a correct record and signed by the Chairman:

14th August 2012
15th August 2012
3rd October 2012
30th October 2012
21st December 2012
29th January 2013
22nd March 2013
4th April 2013

5. PROCEDURE FOR DETERMINING THE CLASSIFICATION OF FILMS

The Licensing Manager, John Gilbraith, with the aid of a powerpoint presentation, presented a report which outlined proposals to adopt a formal procedure that the Borough Council could follow when determining the classification of previously unclassified films. He explained that as a result of a recent request (the first since the Borough Council had taken over responsibilities under the Licensing Act 2003) to provide classifications for a number of short films that had previously been unclassified it had prompted the proposals to adopt and formalise a procedure.

John Gilbraith explained that the Borough Council, as the Licensing Authority, were responsible for authorising the public exhibition of films. Section 20 of the Licensing Act 2003 provided that where a premises licence or Club Premises Certificate authorises the exhibition of a film, the licence must include a condition requiring the admission of children to films to be restricted in accordance with recommendations given either by the British Board of Film Classification (the BBFC) or by the Licensing Authority itself. The Licensing Manager explained that whilst the BBFC performed a national film classification role, the Borough Council, as a Licensing Authority, was the classification body for the public exhibition of films shown in the Borough by virtue of the Licensing Act 2003.

The Licensing Manager outlined the four recommendations contained in the report namely:

- to adopt a policy and procedure for dealing with the classification of films;
- adopt the Guidance issued by the BBFC to assist in the determination of classifying films;
- delegate responsibility for the authorisation of films which not been classified by the BBFC to the Licensing Manager in conjunction with the Senior Licensing Officer and;
- delegate responsibility for the authorisations of films which have not been classified and where the Licensing Manager and Senior Licensing Officer are unable to make a formal determination to a Licensing Sub-Committee.

He stated that classification would simply be done by means of viewing the film and following the BBFC guidance. If the Chairman and/or Vice-Chairman deemed it necessary or wished to view any film(s) with the licensing officers this could be arranged as appropriately.

It was explained that the Exhibition of a Film was defined under Schedule 1 of the Act as “any exhibition of moving pictures”. There were, however, a number of exemptions such as demonstrating a product, advertising foods or services; providing information, education or instruction; or part of an exhibit on show in a museum or art gallery.

The Borough Council must carry out its functions with a view to promoting the licensing objectives, in particularly the protection of children from harm. The Section 182 Guidance stipulated that “the protection of children from harm includes the protection of children from moral, psychological and physical harm. This includes not only protecting children from the harms associated with alcohol but also wider harms such as exposure to strong language and sexual expletives (for example, in the context of exposure to certain films or adult entertainment)” There may, however, be instances where there could be a case for relying on the prevention of crime and disorder objective.

The BBFC was an independent, non-governmental body funded through the fees it charged to those who submit films, videos, DVDs and digital games for classification. The BBFC classifies films intended for public exhibition on behalf of the local authorities that licence premises for that purpose under the Licensing Act 2003. The BBFC also classifies videos, DVDs and digital games under the Video Recordings Act 1984.

The BBFC adopted two general principles; that works should be allowed to reach the widest audience that was appropriate for their theme and treatment, and that adults should, as far as possible, be free to choose what they see, provided that it remained within the law and was not potentially harmful. The three main qualifications used when applying these principles were:

- Whether the material was in conflict with the law or had been created through the commission of a criminal offence;
- Whether the material, either on its own, or in combination with other content of a similar nature, may cause any harm at the category concerned. This included not just any harm that may result from the behaviour of potential views but also any moral harm that may be caused.
- Whether the availability of the material, at the age group concerned, was clearly unacceptable to broad public opinion. It is on this ground, for example, that the BBFC intervenes in respect of bad language.

There were a number of legal requirements that the BBFC had to also consider:

- Human Rights Act 1998
- Licensing Act 2003
- Video Recordings Act 1984
- Obscene Publications Act 1959 & 1964
- Criminal Justice and Immigration Act 2006
- Protection of Children Act 1978
- Sexual Offences Act 2003
- Public Order Act 1986
- Cinematograph Films (Animals) Act 1937
- Animal Welfare Act 2006
- Tobacco Advertising & Promotion Act 2002

The Licensing Manager outlined to the Committee the various film classifications and how the guidance that was used on the main issues (for example, sex and violence) was specifically applied from 'U' rating through to 'R18' rating. There were no premises within the Borough which were licensed to show R18 films.

The Licensing Manager explained that the Borough Council may be required to classify a film that has not been classified by the BBFC and therefore it was prudent to have a formal procedure in place to determine the classification.

The proposed procedure had been attached to the report at Appendix 2. As a requirement was placed on the Borough Council to carry out this function it was not proposed to carry out any formal consultation as it was a procedural matter for Licensing Authorities contained within the Licensing Act 2003. If the procedure was adopted it would be implemented with immediate effect. The Licensing Manager explained that any such request for determining film classifications must be received at least 28 days before the proposed screening. A range of information would also need to be provided which included; film maker; synopsis; internet site where the film could be viewed without charge; proposal on age restrictions; details of how age restrictions would be enforced and proposed venue and date. If an age restriction was applied a notice would have to be displayed giving the appropriate details.

The Licensing Manager highlighted that it would not be necessary to change the terms of reference of the Licensing Committee as it was already responsible for all matters relating to the discharge of its functions relating to licensing under the Act, however, notwithstanding this, the adoption of the BBFC Guidance and the proposed procedure for determining film classifications would be incorporated into the next revision of the Borough Council's Statement of Licensing Policy.

Councillor Lovett questioned why, in the event that the film had not been classified by the BBFC, the Council did just not determine that the film could not be shown. The Licensing Manager explained that, for example, a small amateur dramatic group may not want to pay the fee charged by the BBFC to classify the film. He further explained that some local authorities did make a charge for determining the classification of fees, but this was contrary to legislation which stipulated that fees were currently prescribed by Central Government. If and when such power was devolved to local authorities, the Council may be permitted to charge a fee.

In response to a question raised by Councillor Wright, the Licensing Manager explained that village halls would not have to pay for a licence if they only had regulated entertainment. However, if the exhibition of a film was not specified and wished to show a film, they could apply for a Temporary Event Notice (TEN).

Under Standing Order 34, Councillor J Loveless questioned what had been the outcome of the recent request received to classify a number of films. The Licensing Manager explained that the officers could not come to any consensus in relation to some of the films.

He was however aware that the same company had approached a number of different local authorities at the same time and it had subsequently been established that two of the films were being shown at a local cinema in Wisbech. As the local authority, an enquiry had been registered with Fenland District Council as to the process that they had undertaken to classify the film/permit being shown.

The Licensing Manager highlighted that there was no right of appeal against any classification determined by the local authority. In response to a further query, he also explained that if a film was shown for a profit, albeit to a private audience, a licence would be required.

In response to a further question from Councillor Lovett as to why, in the event that the relevant licensing officers could not come to an agreement on the classification for a film, was it deemed necessary to refer it to a Licensing Sub-Committee, the Licensing Manager explained that it would demonstrate transparency and fairness.

Members supported the recommendations as outlined in the report and it was therefore:

AGREED: 1) That the procedure for dealing with the classification of films (as outlined in Appendix Two of the report) be adopted.

2) That the Guidance issued by the British Board of Film Classification (the BBFC) be adopted to assist in the determination of classifying films.

3) That delegated responsibility for the authorisation of films which have not been classified by the BBFC be granted to the Licensing Manager in conjunction with the Senior Licensing Officer.

4) That delegated responsibility for the authorisations of films which have not been classified by the BBFC and where the Licensing Manager and Senior Licensing Officer were unable to make a formal determination to granted to a Licensing Sub-Committee for determination.

6. DATE AND TIME OF NEXT MEETING

Councillor Loveless took the opportunity to refer to the full meeting of the Licensing Committee that had been scheduled in January of this year which had subsequently been cancelled in relation to the Home Office's Consultation on delivering the Government's Policies to cut Alcohol Fuelled Crime and Anti-social Behaviour. The Licensing Manager explained the meeting had not been rescheduled as the consultation period had ended within a couple of days of the meeting that had been scheduled in January, therefore offering Members no opportunity to have an input. He further explained that consultation had been sought in relation to such issues as minimum pricing for alcohol and making the licensing process less of a burden for businesses.

The Government had indicated that it was unlikely to introduce any legislation in relation to minimum pricing, although no formal outcome of the consultation had yet been published.

There being no pending business, no date was set for a further meeting.

The meeting closed at 6.31pm