



WOKINGHAM BOROUGH COUNCIL

A Meeting of the **LICENSING AND APPEALS COMMITTEE**
will be held at the Civic Office, Shute End, Wokingham
RG40 1BN on **WEDNESDAY 8 JUNE 2016 AT 7.00 PM**

A handwritten signature in black ink, appearing to read 'Andy Couldrick'.

Andy Couldrick
Chief Executive
Published on 31 May 2016

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Our Vision

A great place to live, an even better place to do business

Our Priorities

Improve educational attainment and focus on every child achieving their potential

Invest in regenerating towns and villages, support social and economic prosperity, whilst encouraging business growth

Ensure strong sustainable communities that are vibrant and supported by well designed development

Tackle traffic congestion in specific areas of the Borough

Improve the customer experience when accessing Council services

The Underpinning Principles

Offer excellent value for your Council Tax

Provide affordable homes

Look after the vulnerable

Improve health, wellbeing and quality of life

Maintain and improve the waste collection, recycling and fuel efficiency

Deliver quality in all that we do

MEMBERSHIP OF THE LICENSING AND APPEALS COMMITTEE

Councillors

Barrie Patman (Chairman)	Malcolm Richards (Vice-Chairman)	Chris Bowring
Richard Dolinski	Michael Firmager	Emma Hobbs
John Jarvis	Abdul Loyes	Ken Miall
Beth Rowland	Chris Singleton	Chris Smith
Wayne Smith	Bill Soane	

ITEM NO.	WARD	SUBJECT	PAGE NO.
1.		APOLOGIES To receive any apologies for absence.	
2.		MINUTES OF PREVIOUS MEETING To confirm the Minutes of the Meeting held on 9 November 2015.	5 - 8
3.		DECLARATION OF INTEREST To receive any declarations of interest.	
4.		PUBLIC QUESTION TIME To answer any public questions A period of 30 minutes will be allowed for members of the public to ask questions submitted under notice. The Council welcomes questions from members of the public about the work of this committee. Subject to meeting certain timescales, questions can relate to general issues concerned with the work of the Committee or an item which is on the Agenda for this meeting. For full details of the procedure for submitting questions please contact the Democratic Services Section on the numbers given below or go to www.wokingham.gov.uk/publicquestions	
5.		MEMBER QUESTION TIME To answer any member questions.	
6.		REVIEW OF FILM POLICY To receive and consider the Film Classification Policy.	9 - 18

Any other items which the Chairman decides are urgent.

A Supplementary Agenda will be issued by the Chief Executive if there are any other items to consider under this heading.

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Civic Offices, Shute End, Wokingham, RG40 1BN

**MINUTES OF A MEETING OF THE
LICENSING AND APPEALS COMMITTEE
HELD ON 9 NOVEMBER 2015 FROM 7.00 PM TO 8.00 PM**

Committee Members Present

Councillors: Chris Bowring (Chairman), Malcolm Richards (Vice-Chairman), Michael Firmager, Mike Gore, Mike Haines, Philip Houldsworth, John Jarvis, Abdul Loyes, Ken Miall, Beth Rowland, Chris Singleton, Wayne Smith and Bill Soane

Officers in attendance

Luciane Bowker, Democratic Services Officer
Yvonne Jones, Licensing Officer
Julia O'Brien, Principal Licensing Officer

15. MINUTES OF PREVIOUS MEETING

The Minutes of the meeting of the Committee held on 15 September 2015 were confirmed as a correct record and signed by the Chairman.

16. APOLOGIES

An apology for absence was submitted from Councillor Barrie Patman.

17. DECLARATION OF INTEREST

There were no declarations of interest submitted.

18. PUBLIC QUESTION TIME

There were no public questions.

19. MEMBER QUESTION TIME

There were no Member questions.

20. GAMBLING ACT 2005 - STATEMENT OF PRINCIPLES REVIEW

The Committee received a report set out on Agenda pages 7-40 containing the Gambling Act Statement of Principles draft policy for consideration and the results from the consultation exercise undertaken during September and October 2015. The Committee had initially considered the draft policy at its meeting on 15 September 2015 and this was a second review of the report with the addition of the consultation results.

Julia O'Brien, Principal Environmental Health Officer stated that only three consultation responses had been received from: Campaign for Fairer Gambling; Woodley Parish Council and Field Seymour Parkes Solicitors. Julia informed that there had been no need to amend the draft document as a result of the consultation. Consequently the document remained the same as it had been at the September meeting.

During the discussion of the item the following points were made:

- Some Members felt anxious about children being allowed into Bingo premises. They were reassured that where that was the case the gaming machines which attracted children would be strategically positioned to enable staff to monitor their use. Alternatively, these machines could be placed in a secluded area;
- It was pointed out that gaming machines issued vouchers to redeem cash, so it was unlikely that children would be encouraged to use them;

- Members emphasized that gambling premises should be encouraged to collaborate to the MASH System (Multi Agency Safeguarding Hub). This was a system of gathering information from different sources into a central hub for analysis.
- Julia stated that most premises already held incident books and could be encouraged to contribute to MASH by inspectors;
- Default opening hours were given to current licenses but there was an opportunity to reconsider opening hours when renewing licenses;
- Underage testing could be done through Trading Standards and it was the Officers intention to carry out such tests in the future;
- In response to a question Julia stated that there was no legal requirement on minimum staff numbers in betting shops and at the moment there was no evidence of a need to review it;
- Wokingham Borough did not have a high number of betting premises and the Police had not raised concerns relating to gambling activity in the Borough.

RESOLVED That: The Committee agreed and recommended the Gambling Act 2005 – Statement of Principles for adoption by the Council.

21. CHANGES TO INSPECTION REQUIREMENTS

The Committee received a report set out in Agenda pages 41-44 reviewing the current requirements for vehicle testing and inspection in Wokingham Borough.

Yvonne Jones, Licensing Officer explained that the current level of testing carried out by Wokingham Borough Council had fallen below the Government MOT standards. The report proposed to implement a new system by which vehicles would be required to have the Government MOT as well as an additional inspection by Wokingham Borough Council at nominated garages on first licensing and on renewal.

The following changes were also proposed:

- Vehicles from 6-8 years would require an interim MOT at six months;
- Vehicles over 8 years old would require an additional MOT which equated to three per year.

Yvonne pointed out that the Licensing Service did not get involved in setting the fees charged by garages, but it was hoped that the new system would be more cost effective as garages may decide to offer deals for combined Government MOT and inspections at the same time. It was expected that the market forces would regulate the fees accordingly.

Yvonne clarified that Wokingham inspections were not a duplication of MOT as it tested specific things not included in regular MOT tests such as meters and ramps. Members were informed that there were four garages registered to do inspections at the moment, but more garages would be contacted if the new system was agreed. Yvonne stated that under the policy only Wokingham garages could be nominated for inspections.

Yvonne noted that a more vigorous testing would translate into safer and more reliable vehicles to serving the public.

During the discussion of the item the following points were made:

- There was sensitivity to the fact that drivers may have an increased cost if having to submit their vehicles to additional MOTs and inspections in the same year;

- Inspection forms would be reviewed following agreement to the new system;
- Hackney carriages could be up to 15 years old, so potentially many drivers may be affected by this change;
- Inspection charges were tax deductible;
- It was important to ensure the safety of vehicles being used by the public;
- When tariffs were changed drivers were requested to collect their cards at the Council and failure to do so would result in a suspension of the license;
- Modern meters were sealed and it was very difficult to tamper with them.

RESOLVED THAT:

- 1) The Committee agreed to the implementation of a testing regime to include:
 - a) Government MOT's with an additional inspection on first licensing;
 - b) Government MOT's with an additional inspection on renewal.
- 2) No consultation was required.

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TITLE	Film Classification Policy
FOR CONSIDERATION BY	Licensing and Appeals Committee on 8 June 2016
WARD	None Specific
DIRECTOR	Paul Anstey – Joint Service Delivery Manager - West Berkshire and Wokingham Environmental Health and Licensing

OUTCOME / BENEFITS TO THE COMMUNITY

This report introduces a draft Film Classification Policy for consideration by Members.

RECOMMENDATION

Members are recommended to agree the draft Film Classification Policy as presented in the Appendix to this report.

SUMMARY OF REPORT

This report presents a policy for the Licensing Authority to determine the classification of previously unclassified films, appeals by distributors against the British Board of Film Classification (BBFC) decisions or requests to reclassify films, under powers of the Licensing Act 2003.

Background

The Council, as the Licensing Authority, is responsible for authorising the public exhibition of films. Section 20 of the Licensing Act 2003 (the Act) provides that where a Premises Licence or Club Premises Certificate authorises the exhibition of a film(s), 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 purpose of this Policy, set out in the Appendix to this report, is to set out the formal procedure for the Licensing Authority to determine the classification of previously unclassified films, appeals by distributors against the British Board of Film Classification's decisions or requests to reclassify films.

Where a premise seeks or intends to exhibit film(s) that venue must be covered by a Premise Licence, Club Premises Certificate or Temporary Event Notice under the Licensing Act 2003.

In summary, the public exhibition of all films on licensed premises must either be classified by the BBFC or authorised by the Licensing Authority under the powers of the Licensing Act 2003.

The Licensing Authority when authorising film(s) shall at all time take into account the Guidance issued under section 182 of the Licensing Act 2003 (the National

Guidance).

The Licensing Authority may be requested to authorise a film that has already been classified by the British Board of Film Classification (BBFC) in two different circumstances:

- (a) a distributor of a film may appeal against the decision of the BBFC and request that the Licensing Authority re-classifies/authorises the film for local screening (with recommendations on age restrictions); and
- (b) An independent party may request that the Licensing Authority reclassifies/authorises the film for local screening (with recommendations on age restrictions).

In addition, the Licensing Authority may be requested to authorise the showing of an unclassified film(s). This normally occurs in the following cases:

- A film festival covering a specific period of time
- A one off screening of a film
- A trailer for a film

In accordance with paragraph 10.31 of the National Guidance, the Licensing Authority shall concern itself primarily with the protection of children from harm. It will not use its powers to censor films save where there is clear cause to believe that this is required to promote the licensing objectives.

Under the LA03, the Licensing Authority must carry out its functions with a view to promoting the licensing objectives. In terms of film exhibitions and festivals, the most relevant licensing objective is the Protection of Children from Harm

Analysis of Issues

Draft Film Classification Policy for consideration.

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

The Council faces severe financial challenges over the coming years as a result of the austerity measures implemented by the Government and subsequent reductions to public sector funding. It is estimated that Wokingham Borough Council will be required to make budget reductions in excess of £20m over the next three years and all Executive decisions should be made in this context.

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	Nil	Yes	
Next Financial Year (Year 2)	Nil	Yes	
Following Financial Year (Year 3)	Nil	Yes	

Other financial information relevant to the Recommendation/Decision

There are no financial implications arising from the recommendation in this report

Cross-Council Implications

There are no implications arising from the recommendations in this report

List of Background Papers

Licensing Act 2003

National Guidance under Section 182 of the Licensing Act 2003

Contact Julia O'Brien	Service Licensing
Telephone No 01635 519519	Email jobrien@westberks.gov.uk
Date 25 May 2016	Version No. One

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FILM CLASSIFICATION POLICY

2016

POLICY FOR DETERMINING FILM CLASSIFICATIONS

1. Introduction

- 1.1 The public exhibition of all films on licensed premises must either be classified by the British Board of Film Classification (BBFC) or authorised by the Licensing Authority under the powers of the Licensing Act 2003.
- 1.2 Section 20 of the Licensing Act 2003 (the Act) provides that where a Premises Licence or Club Premises Certificate authorises the exhibition of a film(s), 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
- 1.3 The purpose of this Policy is to set out the formal procedure for the Licensing Authority to determine the classification of previously unclassified films, appeals by distributors against the British Board of Film Classification's decisions or requests to reclassify films.
- 1.4 Where a premise seeks or intends to exhibit film(s), that venue must be covered by a Premises Licence, Club Premises Certificate or Temporary Event Notice under the Licensing Act 2003.

2. Definitions

- 2.1 *Children* - any person under the age of 18 years.
- 2.2 *Exhibition of a film* - the exhibition of moving pictures.

3. Circumstances the Licensing authority may classify a film

- 3.1 The Licensing Authority may be requested to authorise the showing of an unclassified film(s) within West Berkshire District Council and Wokingham Borough Council. Usually this will be for:
 - A film festival covering a specific period of time
 - A one off screening of a film
 - A trailer for a film
- 3.2 The Licensing Authority may also be requested to authorise a film that has already been classified by the British Board of Film Classification (BBFC) when:
 - (a) a distributor of a film wishes to appeal against the decision of the BBFC and request that the Licensing Authority re-classifies/authorises the film for local screening (with recommendations on age restrictions);
or
 - (b) An independent party may request that the Licensing Authority reclassifies/ authorises the film for local screening (with recommendations on age restrictions)

4. Submission of film

- 4.1 Applications for authorisation of films shall be referred to and determined by the Licensing Sub Committee on behalf of the Licensing Authority.
- 4.2 Applications should be submitted to the Licensing Authority with a minimum of **28 days** before the proposed screening.
- 4.3 An application for authorisation should include the following information:
 - i) the name of the film maker;
 - ii) A brief synopsis of the film

- iii) any recommendation as may have been made by the film maker upon age limit for the intended audience for exhibition of the film;
 - iv) any existing classification issued by an existing classification body, whether within or outside the UK;
 - v) information identifying the material within the film considered by the exhibitor to be likely to have a bearing on the age limit for the audience for exhibition of the film.
 - vi) the language spoken in the film and whether there are subtitles in English.
 - vii) details of how any age restrictions will be enforced.
- 4.4 All requests shall be accompanied by the film(s) where possible in DVD format to avoid delays, the cost to be borne by the applicant. If DVD format is not possible then arrangements will be made for a suitable venue to view the film.
- 4.5 If the film contains dialogue in a language other than English an interpreter will be required for the classification. West Berkshire District Council and Wokingham Borough Council will arrange for a suitable interpreter and the applicant will be responsible for the cost of this.
- 4.6 All requests must be accompanied by detailed reasons for the request.
- 4.7 Applicants must ensure that all material that is the subject of the application complies with the current interpretation of the Obscene Publications Act 1959, the Copyright Design and Patents Act 1988 or any other relevant legislation and has not been created through the commission of a criminal offence.

5. Process

- 5.1 Requests will be dealt with as expeditiously as possible as it is appreciated that films are generally only shown in cinemas for a relatively short period.
- 5.2 The Sub Committee will view the entire film and assess it against the BBFC guidelines and National Guidance.
- 5.3 The Chairman of the sub committee will have the final decision on the classification to be applied to the film.
- 5.4 The Sub Committee shall issue a Notice of Determination of the authorisation within 5 working days from the date of viewing.
- 5.5 The Licensing Authority will formally advise the applicant and the licence holder of any recommendation(s) restricting the admission of children to the film(s).
- 5.6 Where the Licensing Authority has determined to refuse authorisation of a film clear and concise reasons shall be given.

6. Classification

- 6.1 The BBFC classifies films in accordance with published Guidelines, which are based on extensive research into public opinion and professional advice.
- 6.2 The National Guidance under Section 182 of the LA03 recommends that:
Licensing Authorities should not duplicate the BBFC's work by choosing to classify films themselves. The classifications recommended by the BBFC should be those normally applied unless there are very good local reasons for a Licensing Authority to adopt this role. Licensing Authorities should note that the provisions of the 2003 Act enable them to specify the Board in the licence or certificate and, in relation to individual films, to notify the holder or club that it will make a recommendation for that particular film.

- 6.3 The Licensing Authority considers the classification system used by the BBFC to be nationally understood and accepted. It will therefore use this system and any amendments thereto, as a reference point for determining its recommendation(s) on the restriction of access of children to the film(s). It should be noted however that the Licensing Authority is not obliged to follow these guidelines.
- 6.4 Where a licensed premise seeks to exhibit a film that has not been classified by the BBFC then it will be the responsibility of the Licensing Authority to authorise that film.
- 6.5 The Licensing Authority recognises the principle within the Human Rights Act 1998 that adults should be free to choose their own entertainment. However material should not be in breach of the criminal law, including material judged to be obscene under the current interpretation of the Obscene Publications Act 1959 or has been created through the commission of a criminal offence.
- 6.6 In accordance with paragraph 10.31 of the National Guidance, the Licensing Authority shall concern itself primarily with the protection of children from harm. It will not use its powers to censor films save where there is clear cause to believe that this is required to promote the licensing objectives.

7. Protecting children from harm

- 7.1 In terms of film exhibitions and festivals, the most relevant licensing objective is the Protection of Children from Harm.
- 7.2 Paragraph 2.41 of the National Guidance states:
The protection of children from harm includes the protection of children from moral, psychological and physical harm and this would include the protection of children from too early an exposure to strong language and sexual expletives, for example, in the context of film exhibitions or where adult entertainment is provided.
- 7.3 In line with the National Guidance, where a film is recommended by the Licensing Authority as falling into an age restrictive category, no person under the age specified shall be admitted.
- 7.4 Where a film(s) is recommended by the Licensing Authority as falling into a category requiring any persons under a specified age to be accompanied by an adult, no person under the age specified shall be admitted unless accompanied by an adult.
- 7.5 In these circumstances, the licence holder will be required to display in a conspicuous position a notice clearly stating the relevant age restrictions and requirements. With regard to the wording of such Notices, the Licensing Authority shall have regard to National Guidance, e.g.:

Persons Under the Age Of [insert appropriate age] Cannot Be Admitted To Any Part of The Programme

Persons Under the Age Of [insert appropriate age] Can Only Be Admitted To The Programme If Accompanied By An Adult.

8. Authorisation

- 8.1 Any authorisations for the exhibition of film issued by the Licensing Authority shall only apply when the film is exhibited within West Berkshire District

Council and Wokingham Borough Councils and does not effect the authorisation or recommendations in any other Local Authority.

- 8.2 Once authorised by the Licensing Authority a film will be authorised for a particular showing or festival only, subject to the recommendations imposed by the Licensing Authority (unless further application for re-classification is made). Details of the authorisation including any recommendations shall be available from the Council's Licensing Services.
- 8.3 The issue of any authorisation by West Berkshire District Council and Wokingham Borough Council is strictly limited to the authorisation within the Authority and it is assumed that all relevant third party consents and licences in respect of any and all copyright, confidential information and all other intellectual property rights have been obtained.
- 8.4 Where the Licensing Authority authorises unclassified material to be shown the Licensing Authority will require an undertaking from the applicant that he has satisfied himself after proper enquiry that no material to be exhibited contravenes the current interpretation of the Obscene Publications Act 1959, the Copyright Design and Patents Act 1988 or an other relevant legislation and has not been created through the commission of a criminal offence.
- 8.5 The Licensing Authority shall also not be liable for any material that has been created through the commission of a criminal offence. It is the responsibility of the applicant to ensure that no film or trailer contravenes the law.

9. Exemptions

- 9.1 The provision of the exhibition of a film is exempt from regulation by the Licensing Act 2003 (LA03) if:

It consists of or forms part of an exhibit put on show for any purposes of a museum or art gallery (the LA03 does not define a museum or art gallery so the ordinary meaning of the term is taken) **or**:

Its sole or main purpose is to:

- i) demonstrate any product,
- ii) advertise any goods or services (excluding the advertising of films), or
- iii) provide information, education or instruction

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