

## APPENDIX A

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Meeting	Licensing Committee
Date	10 July 2013
<b>Subject</b>	<b>Film Classification Policy</b>
Report of	Director of Development and Regulatory Services
Summary	This is a report proposes that the draft Film Classification Policy be approved by the Licensing Committee and that the Committee recommend it for adoption as policy by full Council

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Officer Contributors	Emma Phasey, Trading Standards and Licensing Manager
Status (public or exempt)	Public
Wards Affected	All
Key Decision	No
Reason for urgency / exemption from call-in	Not Applicable
Function of	Council
Enclosures	Appendix 1 – Draft film classification policy Appendix 2 – Consultation responses
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## **1. RECOMMENDATIONS**

- 1.1 **That the draft film classification policy be approved by the Licensing Committee and recommended for adoption as policy by full Council on 16 July 2013**

## **2. RELEVANT PREVIOUS DECISIONS**

- 2.1 Decision by Council on 17<sup>th</sup> April 2012 to move responsibility for this area to the licensing committee
- 2.2 Decision by Licensing Committee on 26 November 2013<sup>2</sup> to approve consultation for the draft Film Classification Policy.

## **3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS**

- 3.1 The classification of films will support objectives contained within the corporate plan. In particular in relation to a “successful London suburb” as being able to classify films for performance at local small film festivals can contribute to the economic, cultural, environmental and social well being of the borough.

## **4. RISK MANAGEMENT ISSUES**

- 4.1 Currently the council has no formal detailed policy in relation to film classification.
- 4.2 The lack of a sound policy or the adoption of an unsound policy may result in poor decisions being taken and could cause difficulty to businesses and residents. This would leave the authority open to challenge by way of Judicial Review in relation to the policy and/or appeal of a Licensing Committee decision to the Magistrates’ Court. This would adversely affect the Councils reputation.

## **5. EQUALITIES AND DIVERSITY ISSUES**

- 5.1 The Council has a legal obligation to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different groups.
- 5.2 When considering applications, only issues provided for in the legislation and guidance and in addition to the authority’s policy will be taken into account. This will ensure a consistent approach is adopted. Under the terms of the policy, every application will be considered on its own merits, regardless of the race, colour, nationality, ethnic origin, sex, marital status, disability or age of the individuals involved.

5.3 The community in Barnet has a richness of diversity with a broad range of cultural activities and entertainments. Applications will be dealt with in accordance with the Act.

## **6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)**

6.1 Administration will be carried out by the Licensing team, together with support from Legal Services and from Governance Services, when arranging and co-ordinating arrangements for hearings

6.2 Any expenditure will be contained within Development and Regulatory Services budgets.

## **7. LEGAL ISSUES**

7.1 The Licensing Act 2003 gave Local Authorities power to classify films in addition to the British Board Film Classification. To ensure consistency in decision making an agreed sound policy is needed. This should also lessen the risk of appeals against decisions.

## **8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)**

8.1 Council's Constitution - Responsibly for Functions set out the functions of the Licensing Committee, which include '.....Application for film classification for films shown within the Borough.'

## **9. BACKGROUND INFORMATION**

9.1 The public exhibition of all films on licensed premises must either be classified by the British Board Film Classification (BBFC) or authorised by the Licensing Authority under the powers of the Licensing Act 2003.

9.2 It is usual for most films to be released across the country and therefore be classified by the BBFC.

9.3 However where a local film festival is taking place showing films that are not on general release in the United Kingdom, they can apply to the local authority for that area to authorise/classify the film. This is usually a cheaper and quicker option than the BBFC and therefore allows small scale film festivals to take place which otherwise it would be cost prohibitive to do so.

9.4 Furthermore if a film distributor believes a film has been classified incorrectly they can apply to the local authority for the area they wish to show the film in for a reclassification

- 9.5 The London Borough of Barnet is a culturally diverse borough and therefore being able to classify films and encourage small scale film festivals is beneficial to the whole borough.
- 9.6 The responsibility for film classification moved to the Licensing Committee earlier in the year. However there is currently no policy in place in relation to this.
- 9.7 At its meeting on 26 November 2012 the Licensing Committee instructed the Interim Director of Environment, Planning and Regeneration to consult with relevant persons and bodies on the Film Classification Policy.
- 9.6 The consultation document was sent to the Police, film festival organisers, and residents groups. It was also sent to councillors, faith groups, and voluntary organisations,.
- 9.7 The draft policy was subject to public consultation for 13 weeks ending on 26 June 2013. The consultation was available on the Council's web site. Responses were sought as to whether consultees agreed with the draft policy and comments were invited on any aspect of the policy.
- 9.8 2 responses were received in response to the consultation. 1 neither agreed or disagreed with the policy and 1 strongly disagreed. There were no comments made by the respondees as to the reasons for these responses Full information on responses can be find in Annex 2
- 9.9 The draft policy is attached at Appendix 2. There are no changes to the proposed policy that was submitted at the November meeting.
- 9.10 If the policy is approved, the Committee will recommend it for adoption by full Council on 16 July 2013
- 9.11 The policy may be changed at any time after adoption (after further consultation) and the policy will be regularly reviewed.

## 10. LIST OF BACKGROUND PAPERS

None

<b>Cleared by Finance (Officer's initials)</b>	<b>JH</b>
<b>Cleared by Legal (Officer's initials)</b>	<b>BH</b>

## **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 Broad 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 premises 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 the London Borough of Barnet. 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:
1. the name of the film maker;
  2. A brief synopsis of the film
  3. any recommendation as may have been made by the film maker upon age limit for the intended audience for exhibition of the film;
  4. any existing classification issued by an existing classification body, whether within or outside the UK;
  5. 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.
  6. the language spoken in the film and whether there are subtitles in English.
  7. 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. The London Borough of Barnet 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 premises 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 the London Borough of Barnet and does not effect the authorisation or recommendations in any other borough.
- 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 the London Borough of Barnet is strictly limited to the authorisation within the Borough 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:

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

## Appendix 2

### Consultation Responses

How much do you agree or disagree with our policy on film classification? (please tick one option)

