



Complete Agenda

Democratic Services
Swyddfa'r Cyngor
CAERNARFON
Gwynedd
LL55 1SH

Meeting

CENTRAL LICENSING COMMITTEE

Date and Time

10.00 am, MONDAY, 20TH JUNE, 2016

Location

Siambr Hywel Dda, Council Offices, Caernarfon, Gwynedd. LL55 1SH

Contact Point

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(DISTRIBUTED Friday, 10 June 2016)

CENTRAL LICENSING COMMITTEE

MEMBERSHIP (15)

Plaid Cymru (8)

Councillors

Annwen Daniels
Christopher Hughes
Ann Williams
R. H. Wyn Williams

Annwen Hughes
W. Tudor Owen
John Wyn Williams
Vacant seat

Independent (5)

Councillors

John Brynmor Hughes
Angela Russell
Elfed Williams

Louise Hughes
Eryl Jones-Williams

Llais Gwynedd (2)

Councillors

I. Dilwyn Lloyd

Peter Read

Aelodau Ex-officio / Ex-officio Members

Chairman and Vice-Chairman of the Council

A G E N D A

1. ELECT CHAIR

To elect a Chair for 2016/17

2. ELECT VICE CHAIR

To elect a Vice Chair for 2016/17

3. APOLOGIES

To receive any apologies for absence.

4. DECLARATION OF PERSONAL INTEREST

To receive any declaration of personal interest.

5. URGENT ITEMS

To note any items that are a matter of urgency in the view of the Chairman for consideration.

6. MINUTES

4 - 6

The Chairman shall propose that the minutes of the meeting of this Committee, held on 07.03.2016 be signed as a true record.

7. LICENSING SUB COMMITTEE MINUTES

7 - 16

To submit, for information, minutes of the General Licensing Sub-committee meeting held on the following dates –

- i. 09.02.2016
- ii. 04.03.2016

8. FILM CLASSIFICATION POLICY

17 - 25

To consider the report of the Head of Regulatory Services

9. GAMBLING POLICY

Oral update from the Licensing Manager

Agenda Item 6

CENTRAL LICENSING COMMITTEE, 07.03.16

Present: Councillors Annwen Hughes, John Brynmor Hughes, Louise Hughes, Eryl Jones-Williams, Tudor Owen, Ann Williams, Elfed W. Williams and Wyn Williams

Also in Attendance: Sheryl Le Bon Jones (Licensing Manager), Geraint B. Edwards (Solicitor) and Lowri Haf Evans (Member Support and Scrutiny Officer)

1. APOLOGIES

Apologies were received from Councillors Annwen Daniels, Dilwyn Lloyd, Peter Read and John Wyn Williams and from Gareth Jones (Senior Manager - Planning and Environment Service)

2. DECLARATION OF PERSONAL INTEREST

No declarations of personal interest were received from any members present.

3. URGENT ITEMS

It was noted that the recent 'Licensing for Members' training by Mr Jim Button had been very beneficial and had made it clear to Members that the four licensing objectives were central to every decision.

4. MINUTES OF THE PREVIOUS MEETING

The Chair signed the minutes of the previous meeting of this committee, held on 1 December 2015, as a true record.

5. MINUTES OF THE LICENSING SUB-COMMITTEE

Submitted - for information, the minutes of the meetings of the Central Licensing Sub-committee held on

09.10.15

24.11.15

21.12.15

12.01.16

29.01.16

6. GWYNEDD COUNCIL'S GAMBLING POLICY

The Licensing Manager provided a verbal update, which highlighted the Council's duty to review its Policy Statement for the Gambling Act 2005 every three years. In accordance with the arrangements implemented to update the Policy Statement for the Licensing Act 2003, it was noted that the North Wales Group had decided to use the same process to proceed with reviewing and updating the **Gambling Policy Statement** for 2016 - 2019. It was reported that one joint

meeting had already been held to agree on the structure and the content, with a further intention to proceed with implementing the amendments to the policy. It was noted that the policy would follow the style and format of the Council's Licensing Act Policies to ensure consistency.

It was reiterated that one change for this period of amendments would be responding to the need to create a 'local area profile'. From April 2016 onwards, every premises with a Gambling license would need to prepare a risk assessment for the business which would consider the location and the types of people around it, to ensure that they adhere to the gambling objectives. The purpose of the 'local area profile' was to support these businesses to draw up a risk assessment - by sharing information about the nature of Gwynedd (a breakdown of the population, use of the Welsh language, the fact that there's a lot of tourism in the county and that the nature of gambling corresponds to the large caravan sites), the information would form patterns to create a clear picture of the situation for the businesses.

It was reported that the Licensing Manager had commenced the work of drawing up a draft policy with the intention of submitting it to the Licensing Committee before beginning the public consultation process, once the 'local area profile' had been completed. In terms of a timetable, it was noted that the Draft Policy should be ready by June 2016.

Matters arising from the discussion:

- To approve the need to review the Gambling Policy Statement
- An increase in gambling advertisements on television and therefore a need to ensure that the policies were appropriate and correct

The suggested information was accepted and it was suggested to hold a special meeting should the Draft Policy be completed before then.

7. FFORDD GWYNEDD EXERCISE (with Licensing)

A verbal update was received from the Licensing Manager on the service's recent exercises to review Licensing's work processes to ensure that the people of Gwynedd were central to what was being implemented. It was noted that several questionnaires had been completed seeking opinion and observations on the department's work and it was reiterated that these observations had been very supportive and had offered possible considerations e.g. self-service opportunities. It was reported that the next step was listing and reviewing these processes and prioritising them as required.

Observations arising from the discussion:

- A suggestion that good communication and collaboration between the different units within Public Protection should be ensured to make sure that any complaint or observation was addressed.
- A suggestion to visit businesses unannounced or send mystery shoppers to businesses

- Needed to educate the public about the requirements and timetable of hearings
- Needed to educate service providers
- Needed to highlight the lack of resources to the Licensing Committee

In response to the observation regarding the hearings timetable, it was noted that there was an intention to measure this performance with a new indicator - 'application process period'.

It was reiterated that the Licensing Unit's resources were very tight and it was suggested that perhaps the result of the Ffordd Gwynedd exercise would be the need for additional resources.

The Licensing Manager was thanked for the information and the small Unit was praised for its good work.

The meeting commenced at 10.00am and concluded at 10.50am.

CENTRAL LICENSING SUB-COMMITTEE 09.02.16

Present:

Councillors : Eryl Jones-Williams (Chair), Annwen Hughes and Annwen Daniels

Officers: Geraint Brython Edwards (Solicitor), Sheryl Le Bon Jones (Licensing Manager), Heilyn Williams (Licensing Officer) and Lowri H Evans (Member Support and Scrutiny Officer)

1. APOLOGIES

None to note

2. DECLARATION OF PERSONAL INTEREST

None to note.

3. URGENT ITEMS

None to note

4. APPLICATION FOR PREMISES LICENCE - MOTOR FUEL LTD, CONVENIENCE STORE, PORTHMADOG FILLING STATION, PORTHMADOG

The panel and the officers were introduced to everyone present. It was announced that everyone had up to 10 minutes to share their observations on the application.

On behalf of the premises: Mr Chris Mitchener (Licensing Solutions agent on behalf of Motor Fuel Ltd).

Others in attendance: Councillor Jason Humphreys (Local Member Porthmadog East),
Councillor Selwyn Griffiths (on behalf of Porthmadog Town Council)

The report and recommendation of the Licensing Section.

- a) Submitted – the report of the Licensing Manager giving details of the application for a premises licence for 'Convenience Store' Porthmadog Filling Station. It was highlighted that the application was one for a single-storey convenience store to be located on the forecourt of the existing garage with the intention of selling alcohol to be consumed off premises and the provision of late-night refreshments on the premises. It was noted that the applicant had included appropriate steps to promote the four licensing objectives as part of the application.

In the report, reference was made to the relevant legal information: Paragraph 5.21 of the Revised Guidelines (March 2015) published under Section 182 of the Licensing Act 2003 where it is noted that Section 176 of the Licensing Act 2003 prohibits the sale or supply of alcohol from premises that is used primarily as a garage, or is part of premises that is used primarily as a garage. It was emphasised that a premises was used primarily as a garage if it was used for one or more of the following

- the retailing of petrol
- the retailing of derv
- the sale of motor vehicles
- the maintenance of motor vehicles

It was emphasised that it was a matter for the licensing authority to decide, based on the licensing objectives, whether it would be appropriate for the premises to hold a licence. Attention was drawn to the operating schedule and the plan submitted with the application along with additional information.

Following a consultation period, it was noted that no observations had been received from the Environmental Health Service nor the Fire and Rescue Service and that North Wales Police did not oppose the application. Two objections to the application had been received from the Local Member and Porthmadog Town Council.

- b) In considering the application, the following procedure was followed:-
- Members of the Sub-committee and the applicant were given an opportunity to ask questions of the Licensing Manager.
 - The applicant was invited to expand on the application.
 - Consultees were given an opportunity to submit their observations
 - The licensee, or his representative, was invited to respond to the observations.
 - Members of the Sub-committee were given an opportunity to ask questions of the licensee.
 - Members of the Sub-committee were given an opportunity to ask questions of the consultees.
- c) In elaborating on the application, the agent noted on behalf of the applicant that he was happy with what had been submitted and corroborated the following observations:
- The intention was to sell alcohol between 6:00am and 23:00pm - reasonable hours
 - No observations / objections had been submitted by the Police, local residents or any other responsible authority
 - There was no relation between drink-driving and selling alcohol on a garage forecourt
 - 'Need' was not a Licensing Act matter
 - No evidence had been submitted with the suggestion of placing labels on alcohol bottles - no responsible authority had requested this
 - There had been no evidence to suggest that the sale of alcohol from the shop would contribute to crime and disorder
 - Transport matters were not part of the application
 - That alcohol would be sold responsibly - the staff would receive appropriate training
 - Waste bins would be installed on the forecourt
 - The garage did not exist on selling fuel alone - had to invest in a convenience store
 - A new CCTV system would be installed on the site - if the application were approved, the number of cameras would increase.
 - Could not give consideration to 'what could happen' - had to consider the evidence before them.

In response to a question, it was noted that the shop would close voluntarily at 23:00pm with a service window to sell goods after that. This would ensure safety and protect and safeguard the staff.

In response to an observation made by the Licensing Manager in terms of proving that the core use of the premises was as a shop, the agent noted that the business had already increased by 10% by introducing new products, with the intention of further investment to make the site look like a retail site.

- ch) Taking advantage of the right to speak, the Local Member made the following comments:
- He would appreciate the collaboration of the premises to support the bottle labelling scheme (as an indication of responsibility)

- Suggestion to synchronise the hours for the sale of alcohol with nearby premises
- He did not accept the analysis of the flow of customers predicted (a document that had been presented with the application) as the seasonal element had not been considered when estimating the figures
- Concern that the site was near popular areas where late night drinking occurred - it was predicted that the garage would be an attraction
- Concerns already existed regarding traffic - another reason to visit the shop would be likely to maximise issues
- Historically a garage had been at the site - it should not be referred to as a 'convenience store'

In response, the Licensing Manager noted that consuming alcohol was not a licensable activity and it would be difficult to evidence that the alcohol bought on the site would be consumed in nearby locations.

- d) Taking advantage of the right to speak, Councillor Selwyn Griffiths made the following observations on behalf of Porthmadog Town Council:
- The main priority of the site was fuel - it was strongly argued that it was a garage selling fuel and not a convenience store
 - Disappointing that the seasonal aspect had not been considered in the analysis of customer flow
 - Needed to ensure detailed legal observations when considering the core use of the premises.
 - Selling alcohol on the site would be likely to bring back past problems

dd) In summarising his application, the agent noted on the applicant's behalf that the facts and evidence presented on the day should be considered and if any concerns arose or were highlighted then there would be a right to review the licence. Should problems arise, it would be possible to collaborate with the support of the Town Council and the Police. It was noted that it would be possible to consider labelling bottles for a short period - again, with the support of the Town Council and the Police.

DECISION

The Sub-committee came to a decision after considering the application and those observations what were relevant to the principles of the Licensing Act 2003

- **Crime and Disorder**
- **Public Safety**
- **Preventing Public Nuisance**
- **Protection of Children from Harm**

along with the Guidance of the Home Office.

Firstly, the Sub-committee had to decide whether it was legal for the site to sell alcohol, recalling the restriction under section 176 of the Licensing Act 2003 and the fact that petrol and diesel was sold on the site. Following consideration of the applicant's marketing report along with paragraphs 5.21 and 5.23 of the Guidance, the Sub-committee came to the conclusion that the premises would be used as a garage to some extent but would also be used to a larger extent as a convenience store. As a result, the committee was of the opinion that the premises would not primarily be used as a garage.

In these circumstances, the Sub-committee was satisfied that the application did not contradict section 176 of the Act and that it was legal for the premises to sell alcohol.

In discussing the merits of the application, the applicant's observations were considered along with the observations of the local member, Councillor Jason Humphreys,

regarding the prevention of crime and disorder, public safety and the protection of children from harm. Specifically, the local member presented evidence that serious traffic problems were caused by vehicles queuing for fuel on and around the site, which caused traffic congestion and a risk of accidents. The member suggested that extending the range of services on the site would be likely to worsen these problems.

While such evidence was useful and could be relevant to the three objectives raised, disappointment was expressed that evidence of specific events had not been received, including the dates of events, what had happened, and what the outcome had been, etc. This was not a criticism of the member, perhaps he did not have that level of information in his possession, but without this additional information, it was impossible for the Sub-committee to objectively measure the sum and substance of any problems that already existed with the premises that were relevant to the licensing objectives. As a result, the weight that could be given to these observations was minimal.

The Sub-committee highlighted that the Police and the Fire Service did not object to the application. If there were a problem under the licensing objectives, the Sub-committee would have expected observations from these responsible authorities and in considering paragraph 9.2 of the Guidance, the Sub-committee would have expected observations from the Police especially, in relation to any crime and disorder issues. This lack of observations suggested that there were no problems associated with the premises.

The Sub-committee disregarded some observations on the basis that they were not relevant to the licensing objectives, including the following:

1. The observations of the local member opposing the application's use of the description "convenience store" when the premises in his opinion had not been referred to as that before. The description of the premises was a matter for the applicant to decide. Of course, when there is a change in the business direction of a premises, as had happened in this application, the use of a new term to describe a premises should not be surprising.
2. The local member's observations had asked for consistency with the hours for the sale of alcohol with nearby premises. The relevant criterion under the Act was not consistency of hours with other places but whether the application was compatible with the licensing objectives?
3. The Town Council's observations opposing the application on the basis that they considered it to be unwise to sell alcohol where there were drivers. With due respect, the fact that a shop was easy for drivers to get to was not a good enough reason to refuse an alcohol licence for this shop. It is easy enough in this day and age for drivers to go to a shop, park in the car park, and buy alcohol. The supermarkets in the town, including Tesco, were an example of this. Porthmadog Town Council should know that convenient access for motorists is an important aspect of what makes a business sustainable in this day and age.
4. The Town Council's comments that there was no need for another site in the town to sell alcohol. Since 2005, "need" had not been relevant to applications for a premises licence.
5. The observations of the local member and the Town Council requesting a bottle-labelling condition. The Sub-committee could see no justification for introducing additional conditions on a licence when there was no evidence of a problem in the first place that justified taking such a step. In the Sub-committee's view, setting a condition on a premises where there was no reason to doubt that the standard required conditions (e.g. operating Challenge 25) were sufficient to tackle any risk of under-age drinking was putting the cart before the horse.

In the circumstances, and from weighing and measuring the evidence presented, the

Sub-committee was satisfied that there were no problems relating to the premises that were relevant to the licensing objectives and therefore the licence should be approved in line with the application.

The Solicitor reported that the decision would be confirmed formally by a letter sent to everyone present. He also notified that they had the right to appeal the decision within 21 days of receiving the letter.

The meeting commenced at 2.15pm and concluded at 3:50pm

CENTRAL LICENSING SUB-COMMITTEE 04.03.16

Present: **Councillors:** W Tudor Owen (Chair), Ann Williams and John Wyn Williams

Officers: Geraint Brython Edwards (Solicitor), Sheryl Le Bon Jones (Licensing Manager) and Lowri H Evans (Member Support and Scrutiny Officer)

1. APOLOGIES

None to note

2. DECLARATION OF PERSONAL INTEREST

None to note.

3. URGENT ITEMS

None to note

4. APPLICATION TO VARY A PREMISES LICENCE – THE OLD MARKET HALL, PALACE STREET, CAERNARFON

The panel and the officers were introduced to everyone present. It was announced that everybody had up to 10 minutes to submit direct observations on the application.

On behalf of the premises: Mr David Williams (applicant) and Mr Edward Grant (Capita PLC – the applicant's agent)

Others in attendance: Corrina Favento, Mandy Mathews and Cliff Roberts (nearby residents); Moira Duell-Parri (Environmental Health Officer)

The report and recommendation of the Licensing Department.

- a) Submitted – the report of the Licensing Manager providing details of the application to vary a premises licence for The Old Market Hall, Palace Street, Caernarfon. It was highlighted that the application form noted that the nature of the establishment had changed since the business opened in July 2014 and that the premises had held several events under the Temporary Event Notice procedure. The nature of the proposed variation was to extend the licensable activities to include all kinds of regulated entertainment, to extend the hours for the sale of alcohol and to provide late night refreshments. Reference was made to the table that detailed the variation. It was noted that the applicant had included the appropriate steps to promote the four licensing objectives as part of the application.

Following a consultation period, it was noted that the Fire and Rescue Service had no observations on the application. North Wales Police and the Environmental Health Service did not object to the application, but they had proposed specific conditions to be imposed on the licence. It was reported that the Licensing Authority had received confirmation from the applicant that he accepted these conditions and wished to impose them on the licence. Three objections to the application had been received from local residents based on the licensing objective of Preventing Public Nuisance. One objector had suggested that the notice of the application had not been displayed in an obvious place, but the Licensing

Authority was satisfied that the notice met the relevant regulations. One letter of support had also been received from Caernarfon Town Council.

In response to a question regarding the opening times of nearby establishments, the Licensing Manager noted that the licensing hours of nearby establishments varied, with a range of alcohol sales until 1am; playing music until 1am and closing hours up to 2am.

- b) In considering the application, the following procedure was followed:-
- Members of the Sub-committee and the applicant were given an opportunity to ask questions of the Licensing Manager.
 - The applicant was invited to expand on the application.
 - Consultees were given an opportunity to submit their observations.
 - The licensee, or his representative, was invited to respond to the observations.
 - Members of the Sub-committee were given an opportunity to ask questions of the licensee.
 - Members of the Sub-committee were given an opportunity to ask questions of the consultees.
- c) In elaborating on the application, the agent, on behalf of the applicant, noted that he was happy with what had been submitted and reiterated the following observations:
- The property was managed responsibly
 - The intention was to minimise any concerns from local residents and they accepted the objectors' observations and concerns
 - The business offered hospitality and entertainment
 - The premises closed to the public at 12:30am and that everyone left via the Palace Street doors
 - Sound insulation had already been installed
 - CCTV had been installed (at the Police's request) with the Police's cooperation.
 - It was intended to collaborate with a local registered company to provide door supervisors
 - Capita would provide additional training
 - Challenge 21 and Challenge 25 would be supported
 - The applicant was willing to collaborate with the Licensing Department

In response to a question it was noted that one noise complaint had been submitted and had since been solved by installing sound insulation and as a result the complaint had been withdrawn. It was reiterated that the applicant had adhered to the licensing objectives and had completed the one-year probationary period.

In response to a question regarding the entrance / exit to Hole in the Wall Street, it was confirmed that these doors were only used as a fire exit, with three entrances / exits to Palace Street.

- ch) A letter received from Rita and Brian Geary that objected to the application was acknowledged
- d) Taking advantage of the right to speak, Mandy Matthews, a local resident who lived opposite the premises, noted that she objected to application based on noise. She had no objection to the development and she supported the enterprise by a local person. She confirmed that she had not made an official complaint about noise and she had no evidence that all of the noise was coming from the premises in question. It was also noted that she had agreed to a mediation meeting.

It was highlighted that the noise, during specific events, affected her way of life, as she got up early in the morning to go to work. It was added that the noise of live bands at night was too loud - the noise carried through the doors of the premises' toilets and through windows above the building. Reference was made to one occasion where the noise had continued until 00:40am, but she had not complained to the Police or the applicant. It was noted that they did not have double glazed windows on their property and therefore the impact of the noise was louder. She requested assurance that there would be no unnecessary noise and suggested playing music until 11:45pm in accordance with nearby premises.

- (dd) In response to the observation about a mediation meeting, the Licensing Manager noted that a request for a mediation meeting had been issued to all parties once the applicant had received the conditions of the Police and Environmental Health. It was highlighted that EVERY party had not been satisfied with a mediation meeting and therefore a decision was made to progress with a hearing.
- e) A letter received from Mr Harry Matthews that objected to the application was acknowledged.
- f) A letter of support received from Caernarfon Town Council was acknowledged.
- ff) Corrina Faventa, the owner of a restaurant adjoining the premises was given the opportunity to share her observations, although she had not submitted written observations within the consultation period. The Chair noted that Ms Faventa had direct contact with the premises. The applicant and the agent had no objection to this.

It was noted that Ms Faventa had made an official complaint to the Environmental Health Department regarding noise one night in November 2015. She highlighted that a number of customers in the restaurant had complained about the noise and that some had left. The observations were shared with the applicant and although he had not been able to postpone the entertainment on the night, he made improvements to the premises to reduce noise. The complaint was withdrawn. As the restaurant had been closed during the winter, there was no evidence that the improvements had been successful.

- g) Taking advantage of the right to speak, Moira Ann Duell-Parri, the Environmental Health Officer, noted that the department had received two complaints and one of those had been withdrawn. The premises of the other complainant had been visited on 22 February 2016. It was reported that no noise could be heard on the night, but it was noted that the double-glazed windows had been closed and perhaps it would be different in the Summer (with the windows open). It was reported that light could be seen from the Old Market Hall which revealed that the noise insulation was not effective. The officer's willingness to advise the applicant on how to improve the situation was highlighted. It was also reported that the details about the noise insulation work had not been confirmed.

In response to the observation, the Chair noted that the applicant had agreed to the Environmental Health Department's conditions and the applicant was encouraged to collaborate with the officer to improve the situation.

- ng) A letter received from North Wales Police was acknowledged and attention was drawn to the conditions listed in the letter
- i) In summarising his application, the agent, on behalf of the applicant, noted that he accepted the observations and accepted the conditions of the Police and Environmental Health. He confirmed their willingness to collaborate with neighbours and the community and would continue with their investment to try to improve the premises as the business developed. He was thankful for the support and the advice was welcomed. It was confirmed that there was no pattern to the noise and it was not constant. A request was made for the wording, 'fire risk

assessment', to be removed from the premises licence as it was addressed by separate Legislation.

The applicant detailed on his willingness to collaborate and listen to his neighbours' observations. He would also be willing to collaborate with the Environmental Health Officer and was open to ideas to reduce noise.

DECISION

Following consideration of the application and those observations that were relevant to the principles of the Licensing Act 2003, the Sub-committee decided to approve the application. The licence was varied as follows:

1. Supply of alcohol will be permitted, on and off the premises, from Monday to Sunday, between 09:00 and 00:00.
2. Licensable activities A, B, C, D, E, F, G and H from the licensing application form will be permitted from Monday to Sunday, between 09:00 and 00:00.
3. The provision of late night refreshments will be permitted, from Monday to Sunday between 23:00 and 00:00.
4. The opening hours of the premises are Monday to Sunday, between 08:00 and 00:30.
5. Add the noise management conditions recommended by the Environmental Health Unit to the licence.
6. Add the CCTV conditions recommended by the Police to the licence.
7. Remove the "fire risk assessment" condition from the licence.

In making its decision, the Sub-committee took the following matters into consideration:

1. That the applicant is willing for the conditions recommended by Environmental Health and the Police to be added to the licence.
2. That the applicant has asked for the fire risk assessment condition to be removed from the current licence as the fire requirements were met by separate legislation, and therefore the condition was unnecessary.
3. The relevant observations of the parties who had submitted observations in advance, along with the observation of the owner of Stones Bistro, Hole in the Wall Street, were taken into consideration, provided that the observations were relevant to one or more of the licensing objectives.
4. Specifically, the observations made by Mr and Mrs Geary, Ms Mandy Matthews and Mr Harry Matthews raising concerns about noise emanating from the premises during events, were considered. Although the Sub-committee accepted that noise could be relevant to the licensing objective of preventing public nuisance, the Sub-committee was not convinced, based on the evidence received, that there was a noise problem with this premises that could be described as a public nuisance. No evidence was received of the dates of the events, the level of noise during those events, the number of noise events, nor how many people were affected. Only two complaints were submitted to the Environmental Health Unit (and one had been withdrawn) and the Sub-committee did not consider that to be sufficient evidence of public nuisance.
5. The Sub-committee was advised on what was considered to be a public nuisance under law. The Sub-committee made reference to the case of the National Coal Board v Thorne [1976] 1 WLR 543: "*a public nuisance [is] an act or omission which materially affects the material comfort and quality of life...*" The members also made reference to R v Rimmington [2005] UKHL 63 about the "*requirement of common injury*", i.e. a substantial proportion of the public must be affected. It is

- not enough that harm has been caused to specific individuals.**
- 6. In these circumstances, the Sub-committee was not satisfied that the noise problem deriving from the premises should be considered - as a legal matter - as a public nuisance.**

The Sub-committee was satisfied that the application was in accordance with the licensing objectives.

- Crime and Disorder**
- Public Safety**
- Preventing Public Nuisance**
- Protection of Children from Harm**

The Solicitor reported that the decision would be confirmed formally by a letter sent to everyone present. He also notified them of their right to appeal the decision within 21 days of receiving the letter.

The meeting commenced at 10.15am and concluded at 12.00pm

Agenda Item 8

COMMITTEE:	CENTRAL LICENSING COMMITTEE
DATE:	20 JUNE 2016
TITLE:	FILM CLASSIFICATION POLICY
PURPOSE:	FOR DECISION
AUTHOR:	HEAD OF REGULATORY SERVICES

Purpose

1. Gwynedd 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.
2. 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.
3. 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.
4. In summary, the public exhibition of all films on licensed premises must either be classified by the BBFC or authorized by the Licensing Authority under the powers of the Licensing Act 2003.
5. The Licensing Authority when authorizing film(s) shall at all times take into account the Guidance issued under section 182 of the Licensing Act 2003 (the National Guidance).
6. In terms of film exhibitions and festivals, the most relevant licensing objective is the Protection of Children from Harm.
7. The Licensing Authority may be requested to authorize 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/authorizes the film for local screening (with recommendations on age restrictions); and
 - b. an independent party may request that the Licensing Authority reclassifies/ authorizes the film for local screening (with recommendations on age restrictions).
8. In addition, the Licensing Authority may be requested to authorize the showing of an unclassified film(s). This normally occurs in the following cases:
 - i. A film festival covering a specific period of time
 - ii. A one off screening of a film

- iii. A trailer for a film

Relevant guidelines for the classification of films

9. 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.

Delegation of powers under s20 of the Licensing Act 2003

10. The power to authorize a classification of a film for the purposes noted in this document is delegated by the Central Licensing Committee to the Head of Regulatory Services .
11. Once authorized by the Licensing Authority a film will be authorized 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 authorization including any recommendations shall be available from the Council's Licensing Section.

Setting of fees

12. The legislation does not specify a statutory fee for the purposes of film classification. Some Local Authorities have set fees for the purpose of cost recovery only.
13. It is considered reasonable to introduce a fee which reflects the time spent by an officer viewing the film, as well as the cost of processing and producing a certificate.

RECOMMENDATION

It is recommended that the policy is adopted as proposed; and that the Committee approves fee setting in relation to the classification of films for the purposes of cost recovery only.



Gwynedd Council

Policy for Determining Film Classifications

Purpose

Gwynedd 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 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 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.

The definition of children is any person under the age of 18 years.

Under the Licensing Act 2003, the definition of the exhibition of a film is the exhibition of moving pictures.

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 times 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

1. General Policy

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.

In terms of film exhibitions and festivals, the most relevant licensing objective is the Protection of Children from Harm. The Section 182 Guidance issued by the Home Office 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.

2. Principles in Determining Film Classifications

The BBFC classifies films in accordance with its published Guidelines, which are based on extensive research into public opinion and professional advice. The Licensing Authority will not duplicate the BBFC's work by choosing to classify films itself. The classifications recommended by the BBFC will be those normally applied unless there are very good local reasons for a Licensing Authority to adopt this role.

Gwynedd Council retain the right to refuse to consider an application for classification itself but instead recommend the film for submission to the BBFC. This will be done in all cases where the summary of the film suggests that it may be considered for a Restricted 18 classification.

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.

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. As such the procedures outlined later in this document will be followed.

The Licensing Authority recognises the principle within the Human Rights Act 1998 that adults should be free to choose their own entertainment. 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.

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.

Any authorisations for the exhibition of film(s) issued by the Licensing Authority shall only apply when the film(s) is exhibited within the County of Gwynedd and does not effect the authorisation or recommendations in any other area.

Delegation of powers under s20 of the Licensing Act 2003

The power to authorize a classification of a film for the purposes noted in this document is delegated by the Central Licensing Committee to the Head of Regulatory Services .

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 Section.

The issue of any authorisation by Gwynedd Council is strictly limited to the authorisation within the County of Gwynedd 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.

The Licensing Authority will consider each authorisation on its own merit and may impose additional and more specific recommendations where it deems necessary in order to comply with the Protection of Children from Harm Licensing Objective

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 any other relevant legislation and has not been created through the commission of a criminal offence.

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.

Where the Licensing Authority has determined to refuse authorisation of a film(s) clear and concise reasons will be given.

3. Procedures for Authorisation Requests for Procedures for Approval of Films Already Classified by The BBFC

Applications for authorisation of films already classified by the BBFC shall be referred to and determined by the Licensing Manager on behalf of the Licensing Authority. Applications should be submitted in writing to the Licensing Section within Public Protection.

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. This will allow the Licensing authorised officers time to view and authorise the film(s) so that the licence holder is able to adhere to any recommendations on age restrictions the Licensing Authority may impose. In any event, all requests should be submitted on the Licensing Authority's application form a minimum of **28 days** before the proposed screening.

Where an individual or organisation not connected with the film(s) requests reclassification of a BBFC classified film, they are not expected to provide a copy of the film(s). The Licensing Authority will then make suitable arrangements to view the film. It is also accepted that in these circumstances, it may not be possible to give **28 days'** notice before the proposed screening.

All requests must be accompanied by detailed reasons for the request. 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.

Authorised licensing officers will then view the entire film and assess it against the BBFC guidelines and National Guidance and shall issue a Notice of Determination of the authorisation within 5 working days from the date of viewing. The Licensing Authority will then formally advise the applicant and the licence holder of any recommendation(s) restricting the admission of children to the film(s).

Requests must be relevant to the protection of children from harm licensing objective and not frivolous, vexatious or repetitive. Requests may also be relevant to the prevention of crime and disorder licensing objective but only in relation to the contravention of the current interpretation of the Obscene Publications Act 1959 or any other relevant legislation.

In line with the National Guidance, where a film(s) is recommended by the Licensing Authority as falling into an age restrictive category, no person under the age specified shall be admitted. 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.

In these circumstances, the licence holder will be required to display in a conspicuous position a notice clearly stating the relevant age restrictions and requirement, in line with the following examples:

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.

4. Procedure for Authorisation of Films Which Have Not Been Classified by The BBFC or Gwynedd Council

Applications for authorisation will in the first instance be considered by licensing officers. Any request to authorise an unclassified film may however, be referred by a Licensing Manger.

Applications should be submitted a minimum of **28 days** before the proposed screening.

An application for authorisation should include the following information:

- (a) the film maker;
- (b) such recommendation as may have been made by the film maker upon age limit for the intended audience for exhibition of the film;
- (c) any existing classification issued by an existing classification body, whether within or outside the UK;
- (d) a synopsis 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. Where an applicant seeks an authorisation allowing exhibition of the film to persons 18 years and over only, a detailed synopsis will not be required;
- (e) if known, a legitimate and legal internet site where the film, or a portion of the film is available to view without charge;
- (f) any proposals on age restrictions for viewing the film that the applicant intends to impose; and
- (g) details of how age restrictions will be enforced.

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. This will allow the Licensing officers time to view and authorise the film(s) so that the licence holder is able to adhere to any recommendations on age restrictions the Licensing Authority may impose. In any event, all requests should be submitted a minimum of **28 days** before the proposed screening.

The Licensing officers whilst viewing the film(s) will have regard to BBFC Guidelines and s182 Guidance issued by the Home Office and shall issue a Notice of Determination of the application within five working days from the date of the viewing.

When considering all such requests the Licensing officers will pay particular attention to the Protection of Children from Harm Licensing Objective. In line with of the National Guidance, where a film(s) is recommended by the Licensing Authority as falling into an age restrictive category, no person under the age specified shall be admitted. 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.

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 adopt the following examples:

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.

In order to ensure the promotion of the Protection of Children from Harm and Prevention of Crime and Disorder licensing objectives, the Licensing Authority will formally advise the licence holder and applicant of any recommendation(s) on the restriction on the age of access for children to the film(s). This may also include any relevant notices required to be displayed by the licence holder inside and outside the premises. The licensed premises hosting the exhibition of film will be expected to comply with these recommendations.

The Licensing Authority recognises the principle that adults should be free to choose their own entertainment and will not normally override this principle -as such requests shall not normally be refused. However, in all cases the Licensing Authority will expect the applicant to follow the BBFC's Guidelines for 18 and R18 restricted films.

5. Section 20 Licensing Act 2003: Exhibition of Films

All premises permitted to exhibit films are subject to the following mandatory conditions:

1. Where a Premises Licence or Club Premise Certificate authorises the exhibition of films, the licence or certificate must include a condition requiring the admission of children to the exhibition at any film to be restricted in accordance with these paragraphs.

2. Where a film classification body is specified in the licence or certificate, unless paragraph 3 (b) below applies, admission of children must be restricted in accordance with any recommendation by that body.

3. Where:

(a) the film classification body is not specified in the Licence or Certificate; or

(b) the Licensing Authority has notified the holder of the Licence or the Club which holds the Certificate that this paragraph applies to the film in question, admission of children must be restricted in accordance with any recommendation made by the Licensing Authority.

4. In these paragraphs "children" means persons aged under 18 and "film classification body" means the person or persons designated as the authority under section 4 of the Video Recordings Act 1984

6.Exemptions for The Showing of Films

The provision of the exhibition of a film(s) is exempt from regulation by the Licensing Act 2003 if **either**:

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:

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

7. Appeals

There is no right of appeal against the decision of the Licensing Service Manager to classify a film. Any challenge should be brought by way of a Judicial Review.