

Licensing Committee

Wednesday 15 April 2009 7.30 pm

**Council Chamber
Runnymede Civic Centre, Addlestone**

Members of the Committee

Councillors Mrs P I Broadhead (Chairman), Mrs F J Barden (Vice-Chairman), R J Edis, P A Francis, Mrs E Gill, Mrs M T Harnden, R N Jones, C Knight, D W Parr and Mrs M Roberts.

In accordance with Standing Order 29.2 any non-member of the Committee who is considering attending the meeting should first request the permission of the Chairman.

A G E N D A

Notes:

- i) Any report on the Agenda involving confidential information (as defined by section 100A(3) of the Local Government Act 1972) must be discussed in private. Any report involving exempt information (as defined by section 100I of the Local Government Act 1972), whether it appears in Part 1 or Part 2 below, may be discussed in private but only if the Committee so resolves.
- ii) The relevant 'background papers' are listed after each report in Part 1. Enquiries about any of the Agenda reports and background papers should be directed in the first instance to **Miss C. Pinnock, Administration and Leisure Department, Committee Section, Runnymede Civic Centre, Station Road, Addlestone (Tel. Direct Line: 01932 425627). (Email: clare.pinnock@runnymede.gov.uk).**
- iii) Agendas and Minutes are available on a subscription basis. For details, please ring Mr. B.A. Fleckney on 01932 425620. Agendas and Minutes for all the Council's Committees may also be viewed on www.runnymede.gov.uk.
- iv) In the unlikely event of an alarm sounding, members of the public should leave the building immediately, either using the staircase leading from the public gallery or following other instructions as appropriate.

LIST OF MATTERS FOR CONSIDERATION

PART I

Matters in respect of which reports have been made available for public inspection

	<u>PAGE</u>
1. FIRE PRECAUTIONS	3
2. MINUTES	3
3. APOLOGIES FOR ABSENCE	3
4. DECLARATIONS OF INTEREST	3
5. FINANCIAL MONITORING STATEMENT	3
6. SURREY COUNTY DISTRICTS FILM LICENSING JOINT COMMITTEE	4
7. EXCLUSION OF PRESS AND PUBLIC	8

PART II

Matters involving Exempt or Confidential Information in respect of which reports have not been made available for public inspection.

- a) Exempt Information
(No reports to be considered under this heading).

- b) Confidential Information
(No reports to be considered under this heading)

1. FIRE PRECAUTIONS

The Chairman will read the Fire Precautions which set out the procedures to be followed in the event of fire or other emergency.

2. MINUTES

To confirm and sign, as a correct record, the Minutes of the meeting of the Committee held on 29 January 2009, which were included in the March 2009 Minute book.

3. APOLOGIES FOR ABSENCE

4. DECLARATIONS OF INTEREST

If Members have an interest in an item please record the interest on the form circulated with this Agenda and hand it to the Legal Representative or Committee Administrator at the start of the meeting. A supply of the form will also be available from the Committee Administrator at meetings.

Members who have previously declared interests which are recorded in the Minutes to be considered at this meeting need not repeat the declaration when attending the meeting. Members need take no further action unless the item in which they have an interest becomes the subject of debate, in which event the Member must leave the room if the interest is personal and prejudicial.

5. FINANCIAL MONITORING STATEMENT (DF)

(Ref: Minutes of the Licensing Committee, November 2008, page 490, para 324)

1. Purpose of Report

1.1 **The purpose of this report is to inform the Committee of the latest financial projections for the 2008/09 financial year for licensing services.**

2. Background Information

2.1 The Financial Monitoring Statement was introduced to all Committees in September 2006 to inform Members of the current financial position of the services under the remit of each Committee.

2.2 Each statement reflects an updated position based upon the 2008/09 probable budgets and 2009/10 estimates approved by this Committee in January. The projection in the Financial Forecast approved by Council in December 2008 has been updated accordingly.

3. Report

The statement set out in Appendix 'A' is split into three distinct parts:

- Projected budget and forecast
- Savings still to be delivered
- Current year key budget indicators

3.2 The Projected budget and forecast sections show any anticipated variations in the current year's budget. These variations are categorised as approved changes and other potential changes. Implications for the following three years are included for completeness so that the full-year effect of any changes can be seen.

3.3 The achievement of the revenue reductions programme approved by the Council is one of the Council's key performance indicators. Savings targets not yet achieved are reported in the second section of each statement. These savings are all incorporated into the projected budget and forecast figures in section one.

3.4 The final section sets out the key budget indicators for the significant areas of this Committee's budget. This indicates the actual income received set against the amount expected (the budget) for the period covered by each statement.

(FOR INFORMATION)

Background Papers

None stated.

6. SURREY COUNTY DISTRICTS FILM LICENSING JOINT COMMITTEE (DAL)

1. Purpose of Report

- 1.1 **The purpose of this report is to review the Council's film classification function, particularly in terms of its future role in the Surrey Districts Film Licensing Joint Committee. Officers recommend that the Council withdraws immediately from the Joint Committee arrangements and adopts a formal procedure, to be used when necessary and appropriate, for the classification of films to be exhibited in the Borough.**

2. Background Information

- 2.1 Since the 1970s, Runnymede Borough Council has exercised its film classification function (deciding what films may be shown in licensed cinemas and what age groups may be admitted) through the Surrey Districts' Film Licensing Joint Committee (whose current membership also includes Epsom & Ewell, Guildford, Mole Valley, Spelthorne, Surrey Heath and Tandridge). Each constituent authority has nominated two Councillors, each year, to serve on the Joint Committee. Since the Joint Committee's establishment Guildford Borough Council has provided the Secretariat but Officers have now been advised that, in January 2009, Guildford has withdrawn from both membership of the Joint Committee and in providing the Secretariat.

- 2.2 The Joint Committee's terms of reference are to exercise the constituent Councils' film licensing functions in accordance with Section 1(2) of the Cinemas Act 1985. By default, the classification applied by the British Board of Film Classification (BBFC) would apply, subject to possible reclassification if the Joint Committee "called in" a film. The last occasion on which the Joint Committee met to view a "called-in" film was in June 2002. Prior to that, it had met just twice in a 17 year period. At one time it regularly reviewed films (particularly those made abroad and not for mainstream distribution) which did not have a BBFC certificate, but this is now very rare. Since 2002, the Licensing Act 2003 has been enacted and come into force (in 2005). Crucially, the Cinemas Act 1985 has ceased to have effect in England and Wales.

This effectively means that there is now no legal basis on which the Joint Committee can exercise its "film licensing function" because it cannot exercise functions which now come under the Licensing Act 2003. Under Section 7 of the Act, the Licensing Committee is the only body which can exercise those functions. The purpose of this report therefore is to review Runnymede Council's position regarding its film classification responsibility and its future role on the Joint Committee, as well as to recommend that procedures to be put in place to enable the Council, whenever necessary and appropriate, to classify films intended for public exhibition in the Borough.

3. Report

- 3.1 The principal drawback of the Joint Committee in recent years was that only seven of the eleven Surrey District Councils participated in the joint arrangements. Consequently, any film refused a licence for public exhibition by the Joint Committee could, in theory, so far as Runnymede was concerned, still be shown in neighbouring Boroughs such as Elmbridge or Woking.

- 3.2 The four Surrey Districts that were not party to the Joint Committee arrangements (Elmbridge, Reigate & Banstead, Waverley and Woking) have been asked to comment on how they choose to undertake their film classification responsibility. Two responses were received. Elmbridge has confirmed that its Licensing Committee would deal with requests for classification, although they state that they are rarely made – approximately 4 occasions in the past 30 years. Woking has stated that they merely add the standard mandatory

condition to relevant premises licenses, plus a further condition restricting the admission of children, in accordance with any recommendation made by Woking Borough Council. They do not elaborate on any process for making any such recommendation.

- 3.3 From the responses received and from investigations of websites of other large licensing authorities in the country, it is apparent that very few have specific film classification procedures in place or, if they have, they choose not to publicise them.
- 3.4 In view of the effect of the Licensing Act 2003, it is apparent that the Surrey County Districts' Film Licensing Joint Committee no longer has a determinative role to play in terms of exercising film classification responsibilities on behalf of this Council as licensing authority. It could in theory operate in an advisory capacity, but there seems little value to this in current circumstances. Officers therefore recommend that Runnymede withdraws from the Surrey County Districts' Film Licensing Joint Committee with immediate effect. The Licensing Committee must then ensure that it has in place adequate procedures to enable it, on very rare future occasions, to exercise its film classification responsibilities when it does not agree with the classification given by the BBFC.

3.5 The Role of the British Board of Film Classification (BBFC)

- 3.5.1 The BBFC is an independent, non-government body funded through the fees it charges to those who submit films, videos, DVDs and digital games for classification.
- 3.5.2 The BBFC classifies films intended for public exhibition in premises licensed for that purpose under the Licensing Act 2003. The BBFC also has a statutory role of classifying videos, DVDs and digital games under the Video Recordings Act 1984.
- 3.5.3 The BBFC will not classify material which it believes to be in breach of the criminal law. Where possible, the BBFC will carry out its responsibilities through appropriate use of the various classification categories, particularly in order to protect children from actual or potential harm. If necessary, however, the BBFC may cut or even reject a film, video, DVD or digital work.

4. The Licensing Act 2003

- 4.1 Whilst the BBFC performs a national film classification role, the Council, as licensing authority, is the classification body for the public exhibition of films shown in the Borough by virtue of the Licensing Act 2003 (LA03), and as such has the overriding right to classify films that are shown in premises licensed under LA03 such as cinemas, hotels, clubs and public houses.
- 4.2 There is currently one cinema in the Borough which is licensed for the exhibition of films; the Pirates 4D cinema at Thorpe Park. However, 40 other premises are licensed to show films.
- 4.3 Section 20 of the LA03 provides that a mandatory condition shall be applied to all premises licences which authorise the exhibition of films. This relates to the restriction on the admission of children (defined in LA03) as "persons aged under 18") to the exhibition of any film to either the film classification recommended by the BBFC or, if the licensing authority does not agree with the recommendation, to such other classification recommended by the licensing authority.
- 4.4 The wording of the mandatory condition applied to all relevant premises licenses/club premises certificates issued by this Council is as follows:

"Film Exhibitions

- a) Subject to subsection (b) below, the admission of children to the exhibition of films on the premises shall be restricted in accordance with any recommendations made by the British Board of Film Classification (BBFC).
- b) If the licensing authority does not agree with the category of any film as recommended by the BBFC, it may alter the category of the film. On notice of alteration of category being given by the licensing authority to the holder of the

licence, the film shall thereafter be treated as being in the altered category and admission of children to the exhibition of the film shall be restricted accordingly."

- 4.5 The licensing authority can be requested to classify a film that has not been classified by the BBFC. A typical example of this would be a locally made film such as an educational/student production, to be shown in a film festival within the Borough.
- 4.6 A distributor of a film can ask the licensing authority to substitute another classification for that of the BBFC. This right is rarely used by distributors because any decision taken by a licensing authority only affects the showing of that particular film in that authority's area. A distributor who disagrees with the BBFC's classification may, in any case, appeal against it directly to the BBFC so is more likely to use that process, as the outcome of the appeal will affect the showing of the film across the country.
- 4.7 It should be emphasised that the power of licensing authorities under the LA03 to control the viewing of films is far more restricted than under the Cinemas Act 1985. Under the LA03, licensing authorities must carry out their functions with a view to promoting the licensing objectives. In terms of film exhibitions, clearly the most relevant licensing objective is the protection of children from harm. There may, however, be instances where there could be a case for relying on the prevention of crime and disorder objection, although evidence would have to be produced that a particular film would lead to crime and disorder. The licensing authority may only classify films that give rise to concerns regarding these licensing objectives.
- 4.8 The Committee has not yet agreed a formal process to refer to Councillors for classification where films give rise to such concerns.

4.8 Guidance Issued by the Secretary of State

- 4.8.1 In the Secretary of State's Guidance issued under Section 182 of the LA03, it is recommended 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."

5. Proposed Procedure for the Classification of Films to be Exhibited in the Borough in place of the Licensing Joint Committee

- 5.1 Accordingly, the proposed procedure for the classification of films to be exhibited in the Borough is set out below and is recommended for adoption:
- i) The licensing authority can be requested to classify films that have already been classified by the BBFC under the following circumstances:
 - a) Where at least three (but no more than seven) members of the Licensing Committee give notice to the Director of Administration and Leisure of their wish to call-in a film for classification by the licensing authority; or
 - b) Where a distributor of a film requests that the licensing authority classifies the film into a different category from that applied by the BBFC.
 - ii) The licensing authority can also be requested to classify films that have not been classified by the BBFC.
 - iii) Any request to classify a film under the circumstances referred to in paragraphs (i) or (ii) above shall be referred to and determined by a Licensing Sub-Committee, on behalf of the licensing authority.
 - iv) Any request to classify a film made under paragraph (i)(a) above must be accompanied by reasons for calling-in the film. Such requests will be dealt with as

expeditiously as possible, bearing in mind that films are generally only shown in cinemas for relatively short periods.

- v) In order to avoid the appearance of bias or predetermination, none of the Members of the Licensing Committee or Sub-Committee who call-in a film for classification shall sit on the Licensing Sub-Committee constituted for that purpose.
- vi) All requests submitted under the circumstances referred to in paragraphs (i)(b) and (ii) above must:
 - a) be accompanied by a synopsis of the film and a full copy of the film in DVD format; and
 - b) give a minimum of 28 days notice of the proposed screening, and the licensing authority will seek to classify the film within that time period.
- vii) A report containing a synopsis of the film and other relevant information will be submitted to the Licensing Sub-Committee. The Sub-Committee will view the entire film, assess it against the BBFC guidelines (a copy of which is attached as Appendix 'B', which includes details of various classification categories) and issue the appropriate classification. When considering classification requests, the Sub-Committee must do so with a view to promoting the relevant licensing objective(s).
- viii) The distributor and/or the party requesting the classification, together with the premises licence/club premises certificate, holders for all premises licensed for the exhibition of films in the Borough will be notified in writing, of the Sub-Committee's decision, and the reasons for the decision.

6. Council Policy

- 6.1 The Licence conditions applied by this authority reflect the requirements of Section 20 of the Licensing Act 2003.
- 6.2 It is not thought that any change need be made to the Runnymede Constitution as on page 34 of this document, which refers to the Licensing Committee's Terms of Reference, it states that the following functions are within that Committee's Terms of Reference: *'All matters relating to the discharge by the Council of its licensing function under the Licensing Act 2003'*.

7. Resource Implications

- 7.1 Whilst the Council's responsibilities in relation to film classification are now covered by the Licensing Act 2003, these responsibilities are not considered to be onerous, based upon past history, and the fact that there is only one cinema situated within this Borough. Should the situation arise in which a film is required to be classified, existing staff resources are considered adequate.
- 7.2 There is no provision under the Licensing Act 2003 to charge a fee for this service, which will be absorbed within existing resources in the Department of Administration and Leisure.

OFFICERS' RECOMMENDATION that –

- i) the Council withdraws forthwith from the Surrey County Districts Film Licensing Joint Committee and informs the other constituent authorities of this decision; and**
- ii) the procedure for dealing with film classification matters which are the responsibility of this Council, as licensing authority, as set out in paragraphs 5(i)-(viii) of this report, be approved.**

(TO RESOLVE)

Background Papers

None.

7. EXCLUSION OF PRESS AND PUBLIC

If Members are minded to consider any of the foregoing items in private, it is the

OFFICERS' RECOMMENDATION that -

where appropriate the press and public be excluded from the meeting during discussion of the report(s) under Section 100A(4) of the Local Government Act 1972 on the grounds that the report(s) in question would be likely to involve disclosure of exempt information of the description specified in the appropriate paragraphs of Part 1 of Schedule 12A of the Act.

(TO RESOLVE)

PART II

Matters involving Exempt or Confidential Information in respect of which reports have not been made available for public inspection.

a) Exempt Information

(No reports to be considered under this heading)

b) Confidential Information

(No reports to be considered under this heading)