

Licensing Committee

Wednesday, 18th October, 2023

MEETING OF THE LICENSING COMMITTEE

HELD IN THE LAVERY ROOM AND
REMOTELY VIA MICROSOFT TEAMS

Members present: Councillor McKeown (Chairperson);
Aldermen McCullough, McCoubrey and Rodgers;
Councillors Bradley, Collins, P. Donnelly, Doran,
D. Douglas, Gormley, Lyons, Murray, F. McAteer,
McCabe, McCann, McCusker, McMullan and Ó Néill.

In attendance: Ms. K. Bentley, Director of Planning and Building Control;
Ms. N. Largey, City Solicitor/Director of Legal and
Civic Services;
Mr. S. Hewitt, Building Control Manager; and
Mrs. L. McLornan, Democratic Services Officer.

Apologies

Apologies for inability to attend were reported from Councillors Anglin and Smyth.

Minutes

The minutes of the meeting of 20th September were taken as read and signed as correct. It was reported that those minutes had been adopted by the Council, at its meeting on 4th October, 2023, subject to the omission of those matters in respect of which the Council had delegated its powers to the Committee.

Declarations of Interest

No declarations of interest were reported.

Delegated Matters

THE COMMITTEE DEALT WITH THE FOLLOWING THREE ITEMS IN PURSUANCE OF THE POWERS DELEGATED TO IT UNDER STANDING ORDER 37(d)

Houses in Multiple Occupation (HMO) Licences Issued Under Delegated Authority

The Committee noted a list of applications which had been approved under the Council's Scheme of Delegation during September 2023.

Licences Issued Under Delegated Authority

The Committee noted a list of applications for licences which had, since its last meeting, been approved under the Council's Scheme of Delegation.

Final decision on competing Stationary Street Trading Licence applications for Donegall Square East

The Committee was reminded that, at its meeting on 16th August, 2023, it had agreed that it was minded to grant Mr McCafferty a Stationary Street Trading Licence to sell hot food and non-alcoholic beverages from a trailer from Monday to Sunday, 10.00pm. to 3.00 a.m.

The result of that decision meant that the single Designated Street Trading Site was taken and, as such, there was no suitable location for the other applicant. As a consequence, the Committee agreed that it was minded to refuse the application which had been submitted by Mr. Hamill. That decision was on the grounds set out in Sections 9(1) (a) (i) and (iv) of the Street Trading Act (Northern Ireland) 2001, namely, that the location at which the applicant wished to trade as a stationary trader was unsuitable by virtue of the fact that there was only one designated site available and there were sufficient traders trading in the street, or at premises adjoining it, in the articles, things or services in which the applicant wished to trade.

The Building Control Manager outlined that, as required under the Act, when the Council was minded to refuse a licence application, the applicant must be informed that they were permitted to make representation regarding the refusal of the Council, with such representations to be made not less than 21 days from the date of notice.

He confirmed that Mr. Hamill had subsequently emailed the Service stating that he would not appeal against the decision and did not wish to avail of the opportunity to make representation to the Committee.

The Committee agreed to uphold its decision of the 16th August, 2023, granting the licence to Mr. McCafferty and refusing the application from Mr. Hamill on the aforementioned grounds.

Non-Delegated Matters

Proposed response to the DfC questionnaire on Pavement Café Licensing

The Building Control Manager explained that the Licensing of Pavement Cafés Act (NI) 2014 ("the Act") came into operation on 1st October, 2016. It made provision for the regulation by district councils of the placing in public areas of furniture for use for the consumption of food or drink.

The Department for Communities (DfC), when introducing the Act, stated that its aim was to create 'light touch' legislation aimed at encouraging the creation of a café culture. It had been introduced to facilitate the controlled expansion of suitable premises, such as cafes, restaurants and pubs, in support of a vibrant daytime and evening economy and for the general well-being of communities.

The Building Control Manager outlined that the Council, along with a number of other councils, had not implemented the legislation at that time as the Department for Infrastructure Roads had not, and still had not, issued their technical guidance for Councils in support of the Act.

However, the Council, in June 2020, had introduced a temporary process for considering pavement café applications to assist the hospitality sector during the recovery following the Covid-19 pandemic lockdown.

The Committee was provided with a draft response to the DfC questionnaire, which was aimed at evaluating the broad level of stakeholder awareness of the statutory licensing scheme for the regulation of Pavement Cafés by councils, and how successful the legislation which established the scheme had been in delivering its original policy objectives.

The Members were advised that the closing date for the questionnaire was 29th September. However, officers had been in contact with the DfC and it had agreed that it would accept the Council's response after it had been considered by the Committee.

The Committee agreed the submission of the response to the questionnaire as detailed in [Appendix 1 on mod.gov](#).

(At the request of a Member, the Committee adjourned for 20 minutes at this point in proceedings, to allow some Members to attend a protest in the City Centre.)

Request by a Cinema Licensee in relation to the Film Classification for 'Five Nights at Freddy's' film

The Committee considered the undernoted report:

"1.0 Purpose of Report or Summary of main Issues

1.1 To consider a request from a cinema operator to create a new classification rating of '15A' for broadcast of the 'Five Nights at Freddy's' film in cinemas within the Belfast City Council area.

2.0 Recommendations

2.1 The Committee is requested, having considered representations, to decide whether to:

- a) Depart from Standard Licence Condition 2 (b) which states that 'No persons under the age of fifteen years shall be admitted to any Exhibition when a '15' film is in the programme' and to permit cinema operators to impose a rating of '15A' for the Belfast City Council area in respect of the 'Five Nights at Freddy's' film which would mean that patrons under the age of 15 would be permitted entrance to view the film when accompanied by an adult.

OR

- b) Refuse the request to depart from the Standard Licence Condition and require the cinema operator to comply with the rating determined by the BBFC.

OR

- c) Defer consideration of the matter to allow Members to view the film and make a decision thereafter.

2.2 Whilst there is a general provision for appeals in relation to the conditions placed on Cinema Licences, there is no right of appeal in respect of this decision.

2.3 Members are advised that the Licensing Committee does not have delegated powers in relation to policy and legislation concerning licensing matters and as such your recommendation will be subject to ratification by Council.

3.0 Main report

Key Issues

Council powers and the role of the BBFC

3.1 Councils' licence cinemas and other venues under the Cinemas (Northern Ireland) Order 1991 for the exhibition of films. In general, the legislation relates to technical matters such as structural stability and fire safety and, as such, the powers to issue licences are delegated to the Director of Planning and Building Control.

3.2 Unlike other Licencing schemes, there is no public notification and representation process for Cinema Licence applications hence there is normally no involvement of the Committee with Cinema Licensing.

- 3.3 Belfast City Council has established conditions of licence regarding the general running and administration of the premises. One such condition is that only films which have been classified with a certificate issued by the British Board of Film Classification (BBFC) may be shown. These Conditions are attached at Appendix 1.
- 3.4 The BBFC is an independent body which classifies all films on behalf of local authorities, and they have strict guidelines and criteria in awarding films a classification. The BBFC Classification Guidelines are attached at Appendix 2.
- 3.5 The BBFC system is used by all authorities within the United Kingdom and all commercial films will be classified through this process. The Council has adopted the BBFC classifications within the licence conditions on all cinema licences granted in Belfast.
- 3.6 Article 3 (3) (a) of the Cinemas (Northern Ireland) Order 1991 states that it shall be the duty of a district council, in granting a licence under this Article as respects any premises to:
- ‘impose conditions or restrictions prohibiting the admission of children to film exhibitions involving the showing of works designated, by the council or by such other body as may be specified in the licence, as works unsuitable for children’.
- 3.7 Paragraph 2 (b) of the Council’s Standard Licence conditions states that:
- ‘No persons under the age of fifteen years shall be admitted to any Exhibition when a ‘15’ film is in the programme.
- 3.8 However, Paragraph 3 of those conditions goes on to provide that:
- ‘Notwithstanding the conditions hereinbefore contained, a film may be exhibited, or children, or any class of children, may be admitted thereto, or admitted unaccompanied, if permission of the Council is first obtained and any conditions of such permission are complied with.’
- Request relating to ‘Five Nights at Freddy’s’**
- 3.9 A request has very recently been received from the licensee of the Movie House at Cityside (Yorkgate) that the Committee consider the creation of a new age rating of ‘15A’ for a forthcoming film, ‘Five Nights at Freddy’s’, which is due for

release on 27 October 2023. A rationale has been provided by the applicant in support of a '15A' rating and is attached at Appendix 3.

- 3.10 Presently such a classification does not exist in the BBFC ratings. The nearest equivalent is a '12A' which permits children under 12 to view such a film if accompanied by an adult. The proposal of the applicant in relation to 'Five Nights at Freddy's' would be to permit children under the age of 15 into the film if accompanied by an adult.
- 3.11 The film has only recently been classified by the BBFC as '15' hence the lateness of the request to bring this matter to your attention. The classification means that no one younger than 15 years of age may watch the film in a cinema. In their assessment of the film, the BBFC provide the following narrative: *'A man with a traumatic past takes a night security job at a shut down diner in this US horror thriller. Scenes of strong, sustained threat and violence accompany an unsettling theme of child abduction.'*
- 3.12 The film has been classified as PG-13 'for strong violent content, bloody images, and language' in the US.
- 3.13 The Irish Film Certificate Office has rated the film as '15A' on the basis of their assessment metric of strong violence, mild drugs and mild language along with the following narrative: *'Supernatural horror with jump scares and some scenes of bloody violence. Injury detail depicted. Theme of child abduction'*.
- 3.14 Mr McAdam has advised in recent years there has been a significant shift in the way families consume film and parents prefer to be the decision makers. Parents find it hard to understand why they have the power to choose a 12A film for their children but not a 15 rated film. This can cause frustration and embarrassment for those who arrive at the cinema and are then prevented from seeing the film.
- 3.15 He has also stated that Five Nights at Freddy's is based on a video game which uses a different rating system called PEGI. This game has a PEGI age rating of 12 so part of the fanbase will be early teens who will want to see this movie.
- 3.16 Members will recall that in February 2022 you considered a similar request from Mr McAdam in relation to 'The Batman' and after consideration refused the request to create a 15A film classification for the film, thereby requiring cinema operators to comply with the rating determined by the British Board of Film Classification.

- 3.17 Subsequently however the Council, at its meeting of 1 March 2022, overturned your decision and agreed to depart from Standard Licence Condition 2(b) which stated that, 'No persons under the age of fifteen years shall be admitted to any Exhibition when a '15' film is in the programme' and to permit cinema operators to impose a rating of '15A' for the Belfast City Council area in respect of 'The Batman' film, which would allow patrons under the age of 15 entrance to view the film, when accompanied by an adult.

Departure from the rating determined by the British Board of Film Classification

- 3.18 From a legal perspective the Council may depart from a BBFC classification should it wish to do so.
- 3.19 There are however significant practical concerns which Members may wish to consider in so doing.
- 3.20 BBFC classification is imposed by the statutory body with the requisite expertise in this matter who are entrusted to provide guidance about whether a film is suitable for children to view.
- 3.21 All classification decisions are based on the BBFC's published and regularly updated Guidelines. The Guidelines are the product of extensive public consultation, research and the accumulated experience of the BBFC over many years.
- 3.22 Films for cinema release are usually seen by at least two BBFC Compliance Officers, and in most cases, their age rating recommendation is approved by the Compliance Manager or the Head of Compliance.
- 3.23 Compliance Officers look at issues such as bad language, dangerous behaviour, discrimination, drugs, horror, nudity, sex, violence and sexual violence, when making recommendations.
- 3.24 As Members will appreciate, the Council has no such internal expertise or processes in place to impose its own ratings. It is difficult to identify any other external agency with sufficient expertise in child protection in this area other than BBFC.

- 3.25 Ultimately, the purpose of BBFC classifications is to protect children from viewing material which, in the view of those with established expertise in this field, is not suitable for them.
- 3.26 There may therefore be reputational issues for the Council in applying a lesser classification to a film which it has not seen in advance, particularly bearing in mind the reasons for a '15' classification.
- 3.27 If the Committee were minded to depart from Paragraph 2 (b) of the Standard Licence Conditions, Committee is asked to consider imposing the following additional special conditions upon any cinema operator who wishes to show the Five Nights at Freddy's film as a 15A:
- I. Any cinema operator who wishes to show the Five Nights at Freddy's film as a 15A must notify the Council in advance.
 - II. The cinema operator must clearly indicate the nature of any certificate received from the BBFC in any advertisement of the film displayed at the premises, as well as the fact that the Council has agreed that accompanied children under 15 may be permitted entrance.
 - III. The cinema operator must provide appropriate advice in respect of '15A' films to enable an accompanying adult to decide upon the suitability of the film for children under the age of fifteen years.
- 3.28 Alternatively, the Committee may wish to consider seeking the opportunity to view the film, in advance of its release, to form their own opinion about the appropriateness of determining a rating other than that set by the BBFC.
- 3.29 A representative from the BBFC and Mr McAdam have been invited to attend Committee and will be available to answer any questions Members may have in relation to the film.

Financial and Resource Implications

- 3.30 None.

**Equality or Good Relations Implications/
Rural Needs Assessment**

- 3.31 There are no issues associated with this report."

The Chairperson advised the Committee that Mr M. McAdam, Managing Director of Movie House Cinemas, and Mr. E. Lamberti, Policy Manager at British Board of Film Classification (BBFC), were both in attendance.

After discussion the Committee agreed to hear from both speakers.

Mr. McAdam advised the Committee that:

- certain films being given a certificate of “15” by BBFC caused problems for cinema operators when those films typically attracted a younger audience;
- the film in question was based on a video game and that video games were rated under a different system, namely Pan European Game Information (PEGI), and that the game was rated “12”;
- he reminded the Committee that it had previously allowed cinemas to permit those under the age of 15 to view “The Batman” film, which had been released in early 2022, as long as they were accompanied by an adult;
- while he respected the BBFC advisory rating, families would sometimes become frustrated and obstructive with cinema staff during the mandatory ticket age check, particularly when the tickets had been purchased online;
- he believed that parents should have the right to take their children aged under 15 to the film if they thought it was suitable;
- the film would be available on a streaming service a few weeks after it had been released in cinemas and that those under the age of 15 could watch it within their homes; and
- the film was classified as a “15A” in the Republic of Ireland.

The Chairperson then welcomed Mr. E. Lamberti, to the meeting.

Mr. Lamberti advised the Committee that:

- all of the age ratings provided by the BBFC were in accordance with public opinion;
- 10,000 members of the public were consulted in respect of the guidelines every four to five years and that consultation was ongoing at present;
- one of the main roles of BBFC was to protect children from viewing harmful content and to help audiences choose what films to watch in cinemas and via streaming services;
- BBFC was an independent and not-for-profit organisation;
- BBFC always classified content at the lowest possible age rating under its guidelines and that it wanted films to be available to the widest possible audiences;
- BBFC had an advisory panel on children’s viewing, comprising experts in child welfare and child development, children’s charities and licensing authorities, OFCOM and international regulators; and

- the Committee should be mindful of the responsibilities which it would take on if it were to lower the age rating of any film which had been classified at a higher age rating by the BBFC.

In response to a question from a Member, Mr Lamberti advised the Committee that there had never been a major call for a rating of “15A” within the UK. He explained that, however, it was something which it was consulting on within the BBFC public consultation which was currently underway and that the results would be available within a few months.

In response to a further question in respect of home streaming services, he outlined that, despite there being no legislation in respect of children viewing certain content within the home, over thirty streaming services used BBFC classifications within the UK for their content, as they recognised the importance of the ratings for audiences choosing what to watch.

Mr. Lamberti further advised the Committee that watching a film in the cinema and watching it at home were very different experiences, pointing out that certain measures could be taken to lessen the impact in the home, such as pausing it, skipping a scene or turning on the lights.

In respect of different countries having different age ratings for films, Mr. Lamberti advised the Committee that each country had certain cultural standards and that UK audiences were content with the BBFC age rating guidelines.

During discussion, a number of Members stated that, while they appreciated the consideration that BBFC had paid in determining the age rating for the film, they felt that children developed at different rates and that parents should be able to make a choice as to whether the film was suitable for their children to watch.

A Member stated that it would not necessarily always be a parent who would be accompanying a child under 15 and that it could be an older sibling or a cousin.

A further Member stated that the Council should be cautious in setting a precedent in reclassifying films against the advice of the BBFC.

In response to a Member’s query, Mr. Lamberti advised the Committee that some older films had been reclassified as audience expectations and standards had changed.

The City Solicitor advised the Committee that it must apply the BBFC age rating for a film unless it had reasons why it would choose to depart from it and that it had a legal obligation to consider any such request from an operator on a case by case basis. She also reminded the Committee that it did not have delegated authority in respect of such a policy decision and that such a decision would therefore be subject to Council ratification on 1st November, and that it would also be subject to Call-in.

In response to a Member’s query, the Building Control Manager advised the Committee that, if it was to grant the film a “15A” rating, officers were suggesting that a

condition be imposed requiring any cinema within the Council area which wished to adopt that rating would be required to notify the Council of its intention to do so in advance.

Proposal

Moved by Councillor Ó Néill,
Seconded by Councillor McCann,

That the Committee agrees to depart from Standard Licence Condition 2 (b) which states that “No persons under the age of fifteen years shall be admitted to any Exhibition when a ‘15’ film is in the programme” and to permit cinema operators to impose a rating of ‘15A’ for the Belfast City Council area in respect of the ‘Five Nights at Freddy’s’ film, meaning that patrons under the age of 15 would be permitted entrance to view the film when accompanied by an adult;

that the Committee agrees the following additional special conditions for any cinema operator who wishes to show the “Five Nights at Freddy’s film” as a 15A:

- I. Any cinema operator who wishes to show the Five Nights at Freddy’s film as a 15A must notify the Council in advance;
- II. The cinema operator must clearly indicate the nature of any certificate received from the BBFC in any advertisement of the film displayed at the premises, as well as the fact that the Council has agreed that accompanied children under 15 may be permitted entrance; and
- III. The cinema operator must provide appropriate advice in respect of ‘15A’ films to enable an accompanying adult to decide upon the suitability of the film for children under the age of fifteen years.

On a vote, eight Members voted for the proposal and five against and it was accordingly declared carried.

The Committee noted that, as the decision was not a delegated matter, it would be subject to Council ratification at its meeting on 1st November, 2023, and that it would also be subject to Call-in.

After further discussion the Committee also agreed that a letter would be sent to the British Board of Film Classification (BBFC) to request that it would consider formally adopting a new classification of “15A” for films, as part of its ongoing public consultation.

Chairperson