

LICENSING SUB-COMMITTEE HEARINGS

17 SEPTEMBER 2010

Present :- Councillors Nick Cope and Michael Lilley

1. Membership

Councillor Harris was unable to attend the hearing and Mr Essex informed the Sub-Committee that the meeting was quorate with two members and would proceed on this basis.

2. Appointment of Chairman

RESOLVED that Councillor Cope be appointed Chairman.

3. Declarations of Interest

There were no declarations of interest.

4. Minutes

The minutes of the meetings held on 30 April and 6 August 2010 were approved as a correct record.

5. Applications under the Licensing Act 2003

a) Wivenhoe Film Theatre, Phillip Road Community Centre, Phillip Road, Wivenhoe, Colchester, Essex CO7 9BA

The Sub-Committee considered an application for a new premises licence in respect of Wivenhoe Film Theatre to permit the exhibition of films.

In Attendance

On Behalf of the Applicant: Ms Collett (Secretary of Wivenhoe Film Theatre) and Mr Waters (Treasurer of Wivenhoe Film Theatre)

Interested Parties: Mr Cook

Officers: Mr Essex, Lawyer; Mr Harvey, Licensing Manager; Mrs White, Committee Services Officer (Licensing) and Ms Tuthill, Committee Services Assistant (Licensing)

Ms Tuthill, Committee Services Assistant (Licensing), briefly introduced the application advising that a representation had been received from Mr Cook opposing the

application and that a further four representations had been received which were out of the time period for objections. Two letters had been in support of the application and two had opposed it. Those letters in opposition to the application were not relevant representations as they dealt with matters not within the Sub-Committee's remit or were in insufficient detail to be regarded as a relevant representation. The Chairman had been consulted and had determined not to accept the out of time representations.

Mr Waters outlined the application and explained that the application was a community based project to try and establish a cinema in Wivenhoe. Various venues had been considered and whilst it was still hoped to find a permanent home which could be purchased and converted to a cinema, the Phillip Road venue was considered to be a good venue in the intervening period. Mr Waters explained that the film theatre had a hire agreement with Essex County Council and that the premises would not be used after 23.00. It was intended to show films from 19.30 and it was anticipated that most films would be finished in approximately two hours therefore allowing plenty of time for clearing up and for the premises to be vacated by 23.00 when the caretaker would lock up the Centre. The capacity of the area to be used as a cinema was up to 80 people. The Film Theatre intended to operate on a Saturday night and occasionally on a Sunday afternoon and only had the capacity to show one film at a time. It was not intended to use the licence more than this at the current time as the Centre was not available however by having a licence to cover other times the Film Theatre would be able to take advantage of other opportunities if they arose and also would enable them to run a week long film festival in the summer.

In discussing the use of the premises and the issue of parking, and in response to questions from the Sub-Committee, Mr Waters indicated that the majority of the patrons would probably be local. In analysing who had given donations to the project, and therefore were possibly its greatest supporters, over 90% lived within walking distance of the Centre. The Film Theatre would be encouraging people to walk and cycle to the premises as they recognised the difficulties of parking at the premises and in particular the use of Phillip Road which was the private narrow access road to the premises. Restricting the use of the car park was suggested by Mr Cook but it was considered that in doing so, it was possible that people would be driven to use Phillip Road instead which would exacerbate problems. The Centre was currently used for a number of different activities and it was not considered that the Film Theatre in attracting 40 to 60 people would cause greater problems than already existed. Mr Waters explained that they intended to provide stewards to help with issues such as parking and that they would encourage people to park in the public car park, the entrance to which was almost opposite to Phillip Road, with the Centre car park being used for people with mobility issues.

With regard to the issue of noise nuisance, work was ongoing to sort out the noise balance. It was not intended to show blockbusters but more independent and foreign films with subtitles which were unlikely to be so noisy. The windows would have blinds which would be drawn and this would help to reduce the escape of noise from the building. Ms Collett explained that the volume of films would be adjusted according to audience numbers. The Film Theatre were aware of the need to coexist with their neighbours and were mindful of the need to control the escape of noise both for its benefit and for that of the film goers.

Mr Cook addressed the Sub-Committee on his concerns regarding the application. He explained that he lived in the property adjacent to the Centre and the biggest nuisance was the use of the car park and the cars trying to get in and out on Phillip Road. He accepted the use of the Centre during the day but was concerned about the intensification of use if the premises was to be used as applied for to show films seven days a week and until 23.30. Mr Cook asked that if it was intended to use the premises only on a Saturday and with the occasional Sunday then the licence should be granted to reflect this and that individual applications could be sort to vary this if greater flexibility was required. Mr Cook asked that there be a point of contact for residents to contact if there were problems when a film was being shown. Mr Cook sought clarification on what conditions could be placed on the licence and Mr Essex explained that the licence could be granted or not and that the Sub-Committee could impose any conditions it considered necessary and proportionate based on the evidence presented at the hearing. Mr Cook then sought to address the Sub-Committee on the concerns that had been raised in the two late representations that had been received opposing the application. Mr Harvey explained the position with regard to the additional representations that had been received and reiterated that they were out of time and that the Chairman had determined not to hear them. The Sub-Committee could therefore only consider the application and the one relevant objection made by Mr Cook in reaching its decision on the matter. Mr Harvey read to the Hearing the guidance contained in the Council's Licensing Policy on age classification and films and advised the representatives of the Film Theatre that they must have regard to this in showing films.

The Decision

The Sub-Committee considered the guidance issued under Section 182 of the Licensing Act 2003, as amended. The Sub-Committee also gave particular consideration to its own Licensing Policy and in particular Paragraph 5.47 giving guidance on the exhibition of films.

The Sub-Committee gave careful consideration to the submissions of the applicant and the objector and considered them, having regard to the nature of the premises and the events and operating hours proposed.

The Sub-Committee was mindful that its decision must be a necessary and proportionate response aimed at the promotion of the licensing objectives. The Sub-Committee was satisfied that the most appropriate way forward was to grant the application subject to an amendment in hours to reduce the terminal hour to 23.00 and to the imposition of the condition that there be a nominated individual present during the showing of films who can address any issues raised in relation to noise from the regulated entertainment as part of the furtherance of the licensing objective and the Council's Policy for the prevention of public nuisance.

The Sub-Committee noted Mr Cook's concerns regarding traffic and parking on Phillip Road but did not consider that granting the application would result in a significant increase in public nuisance.

The licence was granted subject to the following conditions-

Conditions offered by the applicant on the Operating Schedule

1. All appliances checked annually.
2. Risk Assessment carried out.
3. Toilets on the premises.
4. Events will be supervised.
5. No alcohol on the premises.

Mandatory condition: exhibition of films

1) Where a premises licence authorises the exhibition of films, the licence must include a condition requiring the admission of children to the exhibition of any film to be restricted in accordance with this section.

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

3) Where-

- a) the film classification body is not specified in the licence, or
- b) the relevant licensing authority had notified the holder of the licence that this subsection applies to the film in question,

admission of children must be restricted in accordance with any recommendation made by that licensing authority.

4) In this section-

“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 (c.39) (authority to determine suitability of video works for classification).

6. Close of Meeting

The meeting closed at 11.43.