



## **BURNLEY BOROUGH COUNCIL**

### **LICENSING ACT 2003**

### **THE CONDUCT OF HEARINGS**

#### **1. Application**

- 1.1 All hearings subject to the Licensing Act 2003 (Hearings Regulations) 2005 will be held in accordance with this procedure. The Schedule to this procedure details the hearings which are subject to this procedure.

#### **2. Time of Hearing**

- 2.1 Hearings will commence within the times illustrated in Column 2 of the Schedule, and where the hearing is scheduled to take place on more than one day, it will take place on consecutive working days.
- 2.2 Hearings will normally take place from 2-5pm or 6-9pm on the day of the hearing, but hearings may take place at the discretion of the Committee or Sub-Committee appointed to hear the matter in exceptional circumstances.

#### **3. Members of the Committee or Sub-Committee**

- 3.1 Where the full Licensing Committee sit to hear an application, the full Committee will sit, excluding a member who:
- a) has sat on a Development Control hearing in respect of the premises subject to, or concerned in the Licensing Act 2003 application and/or
  - b) is affected by the application e.g. to be assessed on a case by case basis when a Member is a Member for the Ward or a nearby Ward in which the premises are situated

c) has become an interested party by representing the applicant or any interested party prior to the hearing.

3.2 Where a Sub-Committee sit to hear an application, it will consist of 3 members of the full Committee and will exclude a member who:

- a) has sat on a Development Control hearing in respect of the premises subject to, or concerned in the Licensing Act 2003 application and/or
- b) is affected by the application e.g. to be assessed on a case by case basis when a Member is a Member for the Ward or a nearby Ward in which the premises are situated
- c) has become an interested party by representing the applicant or any interested party prior to the hearing.

Where hearings are conducted remotely a 4<sup>th</sup> substitute Member may also be present.

3.3 Members will act in accordance with the Licensing Act 2003, be aware of the Local Authority Co-ordinators of Regulatory Services Guidance on the Role of Elected Members in Relation to Licensing Committee Hearings under the Licensing Act 2003 and the requirements of the Standards Board for England and Wales.

#### **4. Opening of a Hearing and Identifying Parties to the Hearing**

4.1 The Chair of the Committee or Sub-Committee will introduce the members of the Committee or Sub-Committee.

4.2 The Licensing Manager or Legal Advisor will advise the Committee or Sub-Committee but will not make recommendations or be part of the determination process. They will not retire with the Committee or Sub-Committee members for the purposes of a determination but the Legal Advisor may be asked by the Committee or Sub-Committee to give advice.

4.3 At the commencement of proceedings the Legal Advisor will identify in turn, each party to the hearing who is present, and in relation to that party, whether they are represented, and if so, by whom.

4.4 The Legal Advisor will identify in turn each party to the hearing who is not present at the hearing and in relation to that party will clarify;

a) whether there is evidence that they were given Notice of the Hearing

- b) whether that party has given notice that they intend to attend or be represented
  - c) whether that party has given notice that they consider a hearing to be unnecessary
  - d) whether that party has given notice that they wish to withdraw their representation
- 4.5 Where a party has given notice that they do not intend to attend or be represented, the Committee or Sub-Committee will state whether they intend to proceed in the absence of that party.
- 4.6 Where a party has not given such notice and has failed to attend or be represented, the Committee or Sub-Committee will then decide whether it is necessary in the public interest to adjourn the hearing to a specified date or hold the hearing in the party's absence. The Committee or Sub-Committee may invite representations from the other parties present on this issue before making their decision.
- 4.7 The Committee or Sub-Committee, should it decide to proceed must subsequently consider the application, representation or notice made by a party who does not attend, attaching the appropriate weight of evidence to it.

## **5. Hearings to be held in public**

- 5.1 Unless the Committee determine otherwise following consideration of representations, if any, from the parties present, the hearing shall take place in public. A member of the public, unless a party to the hearing or a person granted permission to address the hearing by the Committee or Sub-Committee at the request of one of the parties, shall not be entitled to address the hearing.
- 5.2 Where representations are made under 5.1 above, such parts or the hearing as the Committee or Sub-Committee in their absolute discretion determine shall be held in private.
- 5.3 The decision at paragraph 5.2 and the reasons for it will be given in public, and the Committee or Sub-Committee will also state whether any party or any persons assisting or representing a party are to be treated as a member of the public for this purpose.

## **6. Commencement of the Hearing**

- 6.1 The Legal Advisor will explain the procedures that the Committee or Sub-Committee will follow at the hearing. In particular the Legal Advisor will clarify that;:

- a) the hearing will take the form of a discussion led by the Committee or Sub-Committee and cross-examination will not be permitted unless the Committee or Sub-Committee considers that cross examination is required for it to consider the representations, application or notice as the case may require.
- b) Members of the Committee or Sub-Committee may ask a question of any party or other person appearing at the hearing.
- c) Members of the Committee or Sub-Committee may take into account documentary or other information produced to the authority before the hearing in support of their application, representation or notice. These will have been provided to the Committee or Sub-Committee members by the Licensing Manager prior to the meeting and the substantive content of the documents need not be repeated verbally at the hearing.
- d) Members of the Committee or Sub-Committee may take into account any new documentary or other information produced to the authority on the day of the hearing with the content of all other parties (if any) and the substantive content of any such documents need not be repeated verbally at the hearing.
- e) Parties will be allowed a maximum equal period to exercise their rights, such period to be determined by the Committee or Sub-Committee.
- f) Parties will be allowed to clarify points upon which they wish to support their application.
- g) Parties may seek permission to question any other party subject to Paragraph a) above.
- h) Parties may seek permission to address the Committee or Sub-Committee.

## **7. Procedure**

- 7.1 The Licensing Manager or other appointed officer of the Licensing Authority are not a party to the hearing. The Manager will outline the facts of the application and relevant representations received from parties.
- 7.2 The Licensing Manager will then outline the legislation under which a determination is required.
- 7.3 The Licensing Manager will outline;

- a) Relevant parts of the Act
  - b) Relevant subordinate legislation
  - c) Relevant sections from the statutory guidance made under Section 182 of the Act
  - d) Relevant paragraphs of the Statement of Licensing Policy made under Section 5 of the Act.
  - e) The time limit which the Committee or Sub-Committee must make a determination under the law.
- 7.4 Each party to the hearing present will then in turn provide information supporting or clarifying of their representations – commencing with the Responsible Authorities, followed by any interested party and then the applicant.
- 7.5 The Committee or Sub-Committee may advise all the parties of details of representations they have received from parties not present.
- 7.6 Thereafter each party, commencing with the Responsible Authorities, followed by any interested party and finally the Applicant, will be given an opportunity to summarise their representations. No new evidence will be allowed to be introduced by any party during the course of any such summation.
- 7.7 The Committee or Sub-Committee will disregard any information given by a party or any other person to whom permission to appear at the hearing has been given which is no relevant to;
- a) Their application, representation or notice or in the case of another person, the application, representation or notice of the party requesting their appearance, and
  - b) the promotion of the Licensing Objectives or in the case of a hearing to consider a notice given by a chief officer of the police, the crime prevention objective only.
- 7.8 The Committee or Sub-Committee will satisfy themselves that they have heard all the relevant information and retire to make their decision in private.

## **8. Persons behaving in a disruptive manner**

- 8.1 The Committee or Sub-Committee may require any person attending the, hearing who in their opinion are behaving in a disruptive manner to leave the hearing and may;
- a) refuse to permit that person to return, or
  - b) permit them to return only on such conditions as the Committee or Sub-Committee may specify

but such a person may, before the end of the hearing, submit to the authority in writing any information which they would have been entitled to give orally had they not been required to leave.

## **9. Adjournment of Hearing**

- 9.1 The Committee or Sub-Committee may adjourn a hearing to a specified date or arrange for the hearing to be held on specified additional dates where it considers this necessary to consider any representations or notice made by a party. (A s53C `summary review` to be determined within 28 days of receipt)
- 9.2 It will not adjourn a hearing in such a way to create an effect on the requirements of granting or rejecting an application under Schedule 8 of the Act or a review under Section 167 of the Act.

## **10. Determinations**

- 10.1 The Committee or Sub-Committee will make its determination at the conclusion of the hearing but in certain circumstances may make a determination within a period of 5 working days of the last day of the hearing.

## **11. Notice of Determination**

- 11.1 The Licensing Manager will issue a notice of determination forthwith to all parties. Such notice will include the reasons for the determination and details of the right of any party to appeal against the decision.

## **12. Record of Proceedings**

- 12.1 The Democracy Team Officer will provide for a record of the hearing to be taken in a permanent and intelligible form and kept for 6 years from the date of determination.

## SCHEDULE

Column 1		Column 2
<b>Provision under which hearing is held.</b>		<b>Period of time which hearing must be commenced.</b>
1.	Section 18(3)(a) (determination of application for premises license)	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 17(5)(c)
2.	Section 31(3)(a) (determination of application for a provisional statement).	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 17(5)(c) by virtue of section 30.
3.	Section 39(3)(a) (determination of application to vary premises license).	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 17(5)(c) by virtue of section 34(5).
4.	Section 39(3)(a) (determination of application to vary premises license to specify individual as premises supervisor).	20 working days beginning with the day after the end of the period within which a chief officer of police may give notice under section 37(5)
5.	Section 44(5)(a) (determination of application for transfer of premises license).	20 working days beginning with the day after the end of the period within which a chief officer of police may give notice under section 42(6)
6.	Section 48(3)(a) (cancellation of interim authority notice following police objection).	5 working days beginning with the day after the end of the period within which a chief officer of police may give notice under section 48(2)
7.	Section 52(2) (determination of application for review of premises licence).	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 51(3)(c).
8.	Section 53C (review of premises licence following review notice)	To be determined 28 days after the day of receipt of the review application as prescribed under section 53A(2)(b).
9.	Section 72(3)(a) (determination of application for club premises certificate).	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 71(6)(c)
10.	Section 85(3) (determination of application to vary club premises certificate)	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 71(6)(c) by virtue of section 84(4)

11.	Section 88(2) (determination of an application for review of club premises certificate)	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 87(3)(c)
12.	Section 105(2)(a) (counter notice following police objection to temporary event notice)	7 working days beginning with the day after the end of the period within which a chief officer of police may give a notice under section 104(2)
13.	Section 120(7)(a) (determination of application for grant of personal licence)	20 working days beginning with the day after the end of the period during within which the chief officer of police may give a notice under section 120(5)
14.	Section 121(6)(a) (determination of application for the renewal of personal licence)	20 working days beginning with the day after the end of the period during within which the chief officer of police may give a notice under section 121(3)
15.	Section 124(4)(a) (convictions coming to light after grant or renewal of personal licence)	20 working days beginning with the day after the end of the period during within which the chief officer of police may give a notice under section 124(3)
16.	Section 167(5)(a) (review of premises licence following closure order)	10 working days beginning with the day after the day the relevant licensing authority received the notice given under section 165(4)
17.	Paragraph 4(3)(a) of Schedule 8 (determination of application for conversion of existing licence)	10 working days beginning with the day after the end of the period within which a chief officer of police may give a notice under paragraph 3(2) or (3) of Schedule 8
18.	Paragraph 16(3)(a) of Schedule 8 (determination of application for conversion of existing club certificate)	10 working days beginning with the day after the end of the period within which a chief officer of police may give a notice under paragraph 15(2) or (3) of Schedule 8
19.	Paragraph 26(3)(a) of Schedule 8 (determination of application by holder of a justices' licence for grant of personal licence)	10 working days beginning with the day after the end of the period within which a chief officer of police may give a notice under paragraph 25(2) of Schedule 8