

# **HYNDBURN BOROUGH COUNCIL**

## **LICENSING ACT 2003**

### **PROCEDURE NOTE ON THE CONDUCT OF LICENSING HEARINGS**

#### **1. Application**

- 1.1 Every hearing that is subject to the Licensing Act 2003 (Hearings Regulations) 2005 (“the Regulations) will be held in accordance with the Regulations and this procedure.
- 1.2 References in this procedure to the “ Licensing Committee” shall unless indicated to the contrary include a reference to a Licensing sub Committee.

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

- 2.1 Hearings will commence within the appropriate period of time stipulated in the Regulations, and where the hearing is scheduled to take place on more than one day, it will whenever possible, take place on consecutive working days.
- 2.2 Hearings will commence at a time to be appointed by the Licensing Authority.

#### **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, with the exception of any member who is excluding from participation under paragraph 3.3 below.
- 3.2 Where a Sub-Committee sit to hear an application, it will consist of 3 members of the full Committee. The sub committee must not include any member who is excluded from participation under paragraph 3.3 below
- 3.3 A member may not sit on either the Licensing Committee or the Licensing sub committee if he / she
  - a) has sat on a Planning Committee which has determined a planning application relating to the premises that are the subject of the licensing application under consideration and/or .

- b) has a personal and prejudicial interest in the licensing application and / or
  - c) has agreed to represent or support either the applicant or any interested party prior to the hearing.
- 3.4 Members will act in accordance with the Licensing Act 2003. They will have received training under the Act and will also act in accordance with the relevant paragraphs of the Local Authority Co-coordinators of Regulatory Services Guidance on the Role of Elected Members in Relation to Licensing Committee Hearings under the Licensing Act 2003, the Hyndburn Borough Council Member codes of conduct and the requirements of the Standards Board for England and Wales.

#### **4. Preliminaries**

##### 4.1 The Chair of the Committee will

- a) outline the purpose of the hearing and the person or premises to which the hearing relates.
- b) ask every person appearing before the Committee to introduce themselves and where appropriate state who they represent.
- c) refer the parties to the procedures that the Committee will follow at the hearing.

In particular the Chair will clarify that;

- the hearing will take the form of a discussion led by the Chair and cross-examination will not be permitted unless the Committee considers that cross-examination is required for it to consider the representations, application or notice as the case may require.
- members of the Committee may ask a question of any party or other person appearing at the hearing.

##### 4.2 The Chair of the Committee will ask the Licensing Manager to indicate

- a) whether or not any parties who do not appear before the Committee have made any representations.
- b) whether or not any person referred to in paragraph 4.2 a) above has indicated that they intend to be represented.
- c) whether or not any representations have been withdrawn
- d) whether or not any party has indicated that they consider a hearing to be unnecessary

- e) whether or not any person has requested permission for other persons (other than a representative) to appear at the hearing, and the points upon which that person may be able to give information or assistance.
- 4.3 Where a party has given notice that they do not intend to attend or be represented, the Committee will consider whether they wish to proceed in the absence of that party.
- 4.4 Where a party has not given such notice and has failed to attend or be represented, the 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 Chair of the Committee may invite representations from parties present on this issue before making their decision.
- 4.5 Where a party wishes to introduce any documentary or other information that they have not produced in advance of the hearing, the Chair of the Committee will ask all other parties whether they consent to that evidence or information being introduced. If any party does object, that documentary or other information should not be introduced.
- 4.6 The Committee will then consider any requests made to call other persons under Paragraph 4.2(e) above, and shall not unreasonably withhold any such permission, having ensured that Paragraph 4.3 above is not undermined by such persons.

## **5. Hearings to be Held in Public**

- 5.1 Subject to this paragraph, the hearing shall take place in public although a member of the public, unless a party to the hearing a representative of a party, or a person mentioned under Paragraph 4.3(e) above, shall not be entitled to address the hearing.
- 5.2 The Chair of the Committee will invite any applications from parties present in relation to whether it is in the public interest to exclude the public from all or part of a hearing.
- 5.3 Where there are such representations, they will be heard in public and following these, the Committee will decide whether the public interest in excluding the public outweighs the public interest in the hearing, or that part of the hearing taking place in public.
- 5.4 Where there are no representations under Paragraph 5.2 the hearing will take place in public. Where there are representations, the Committee's decision and reasons for it will be given in public, and the 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. The Hearing**

- 6.1 The Licensing Manager (who is not a party to the proceedings ) will outline the facts of the application and summarise the nature of the relevant representations that have been received
- 6.2 The Applicant will be invited by the Chair of the Committee to present their application.
- 6.3 Any objectors present will be invited by the Chair of the Committee to present their objections.
- 6.4 At the discretion of the Chair of the Committee a party may be allowed to ask questions of any of any other party
- 6.5 At the discretion of the Chair of the Committee the Solicitor to the Licensing Committee may ask a question of any party.

## **7. Adjournment of Hearing**

- 7.1 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.

## **8. Determinations**

- 8.1 At the conclusion of the hearing the Committee may decide to consider its decision in private. The Chair will then invite everyone (with the exception of the committee administrator) to retire from the meeting room.
- 8.2 The Committee may at any time during the consideration of its decision invite the Solicitor to the Licensing Committee to provide confidential legal advice.
- 8.3 The Committee or Sub-Committee will make its determination at the conclusion of the hearing but in restricted circumstances may make a determination within a period of 5 working days of the last day of the hearing.

**9. Notice of Determination**

- 9.1 The Chair to the Committee will issue a written notice of determination in accordance with the Regulations

| Column 1                               |  | Column 2   |
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| Provision under which hearing is held. |  | Period of time within which hearing must be commenced.   |
| 1.                                     | Section 18(3)(a) (determination of application for 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 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 35(3)(a) (determination of application to vary 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 17(5)(c) by virtue of section 34(5). |
| 4.                                     | Section 39(3)(a) (determination of application to vary premises licence 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 licence).                                      | 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 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).                            |
| 9.                                     | 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). |
| 10.                                    | Section 88(2) (determination of 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).                            |
| 11.                                    | 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   |

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|     |   | under section 104(2).   |
| 12. | 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 within which the chief officer of police may give a notice under section 120(5).                     |
| 13. | 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 within which the chief officer of police may give a notice under section 121(3).                     |
| 14. | 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 within which the chief officer of police may give a notice under section 124(3).                     |
| 15. | 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 receives the notice given under section 165(4).                                   |
| 16. | 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.  |
| 17. | 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. |
| 18. | 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 the chief officer of police may give a notice under paragraph 25(2) of Schedule 8.      |