



Part III of the London Local Authorities Act 1990 (as amended): Street Trading

Rules of Procedure for Licensing Sub-Committee Hearings

1. SCOPE

- 1.1 These procedure rules apply to Licensing Sub-Committees established by the Licensing Committee of Hillingdon Council acting as Licensing Authority. The rules are subject to Street Trading legislation as contained in Part III of the London Local Authorities Act 1990 (as amended)
- 1.3 The purpose of these procedure rules is to guide the Licensing Sub-Committees through the various stages of the hearing process and to direct the Sub-Committee hearing a case, and all other parties involved, on the essential procedural requirements to be followed before, during and after a hearing.

2. SUB-COMMITTEES

Role, Composition and Quorum

- 2.1 All hearings under these procedure rules will be conducted by licensing Sub-Committees for the sole purpose of determining applications for and in relation to licences as required

under Street Trading legislation as contained in Part III of the London Local Authorities Act 1990 (as amended) [the “Act”].

- 2.2 A Sub-Committee will usually consist of three members drawn from the Licensing Committee. The quorum for hearings and meetings of a Sub-Committee is two members. Each meeting shall be chaired by a designated Licensing Sub-Committee Chairman.
- 2.3 The Head of Democratic Services, or his representative (usually the Clerk to the Licensing Committee) shall appoint each Sub-Committee taking into account the need for it to be politically balanced, where possible; the need to involve all members of the Licensing Committee as equally as possible; the need to avoid involving members with an interest in the item to be discussed or members from the ward in which the subject premises is located; and the timescale available for determining applications.
- 2.3 Where hearings are convened, Sub-Committees are not ordinarily subject to the normal committee procedures established under the Local Government Act 1972 and the Council Procedure Rules. For example, a Member who is not on the Sub-Committee hearing the case cannot address the proceedings in his/her capacity as an elected member, except where the member has properly made a representation or is formally representing objectors.

Power to adopt own Procedure

- 2.4 Except where otherwise prescribed by the Act, the Sub-Committee has wide powers to adopt its own procedures as to the general order and manner in which the hearing is to be conducted. For example, it may in any particular case dispense with or modify these Rules of Procedure.

3. BEFORE THE HEARING

Time Limits for Setting up Hearings

- 3.1 The Act does not prescribe a specific period of time within which a hearing is to be held. It is expected that a hearing will to be commenced as soon as is reasonably practicable after the deadline for making representations and in any case where a hearing is likely to exceed more than one day it must be arranged to take place on consecutive days.

- 3.2 The relevant Sub-Committee may at any time postpone the original date on which the hearing is to be held to a new date that it may specify if it considers it necessary to enable it to consider any information or documents provided by a party or having regard to the ability of any party, person representing a party or witness to attend the hearing
- 3.3 Without prejudice to paragraphs 3.1 and 3.32, every effort will be made to arrange for hearings to be held within 10 working days after the end of the period within which representations may be made by responsible authorities and interested parties.

Notice Procedures

- 3.4 In order to hold a fair and transparent hearing, the Street Scene Enforcement Team and parties to proceedings are required to notify each other of relevant information in advance of the hearing as follows:

Notice of Hearing from the Licensing Authority

- 3.5 Notice shall given to all parties to the hearing specifying the date, time and place at which the hearing is to be held.
- 3.6 The Notice of Hearing shall be sent so that, in the ordinary course of events, it is received no later than 10 working days before the first day on which the hearing is to be held.
- 3.7 However, when the Sub-Committee has postponed the original hearing date it shall, as soon as reasonably practicable, notify the parties of the new date, time and place for the hearing.
- 3.8 The Notice of Hearing shall be accompanied by information in writing regarding the following:
- (i) This procedure note or a procedure guide , the report from the Street Scene Enforcement Officer and copies of written objections / petitions received;
 - (ii) Confirmation that a party may be assisted / represented by a person who does not have to be legally qualified;

- (ii) The consequences if a party:
 - (a) Informs the Sub-Committee that he/she does not wish to attend or be represented at the hearing, or
 - (b) Fails to inform the relevant committee whether he/she wishes to attend or be represented at the hearing, or
 - (c) Informs the Sub-Committee that he/she wishes to attend or be represented at the hearing, but fails to attend or be represented.
- (iii) the legal requirements imposed on the Sub-Committee in conducting the hearing.
- (iv) the procedure the Sub-Committee will follow at the hearing.
- (v) time limits and method by which a party should inform the Sub-Committee whether he/she wishes: to attend or address the hearing, be assisted or represented by another person, call a witness to give evidence and in relation to what matters that witness will give evidence, to withdraw any representations or to consent to the application being determined without a hearing
- (vi) any matters on which the Street Scene Enforcement Team considers that it will want clarification from a party.

Notice of Attendance from the Parties

- 3.9 Upon receipt of the Notice of Hearing, and by no later than 2 working days before the day or first day on which the hearing is to be held, each party must give to the Sub-Committee a notice in writing stating:
- (i) whether he/she wishes to attend or address the hearing;
 - (ii) whether he or she wishes to be assisted or represented by another person;
 - (iii) whether he/she wishes to call a witness to give evidence at the hearing and the matters in relation to which he/she wishes that witness to give evidence;
 - (iii) whether he/she wishes to consent to the application being determined without his/her presence
 - (iv) any special needs (for example language translation) to be accommodated
- 3.10 Such notice may be given either by completing and returning to the authority the pro-forma "Notice of Attendance" that accompanies the Notice of Hearing, or by providing any other form of written notification. Notices may be sent by post, fax or email.

Notice of Withdrawal of Representations

- 3.11 A party who wishes to withdraw any objection they have made may do so:
- (i) by giving notice to the licensing authority no later than 24 hours before the day of the hearing; or
 - (ii) orally at the hearing

Street Scene Enforcement Team Officer's Report

- 3.12 A report on the application to be determined will be formulated by the authority's Street Scene Enforcement Team officers, which will contain a summary of the application, objections, their technical observations and recommendations.

Agenda for the Hearing

- 3.13 The Head of Democratic Services or Clerk to the Licensing Committee shall send out the agenda for the hearing (which will include the Licensing Officer's report) to all parties in advance of the hearing.

Consequences of failure to Attend Hearing

- 3.14 The Sub-Committee committee may proceed with a hearing in the absence of a party or a party's representative if the party has:

- (i) informed the Sub-Committee that he/she does not intend to attend or be represented at the hearing (and has not subsequently advised the Sub-Committee otherwise) ;
- (ii) failed to inform the Sub-Committee whether he/she intends to attend or be represented at the hearing; or
- (iii) left the hearing in circumstances enabling the Sub-Committee reasonably to conclude that he/she does not intend to participate further.

- 3.15 Where the hearing is held in the absence of a party, the relevant committee shall consider at the hearing the application or objections made by that party.

- 3.16 If a party has indicated that he does intend to attend or be represented at the hearing, but fails to so attend or be so represented, the relevant committee may
- (i) adjourn the hearing to a specified date if it considers it to be in the public interest, or
 - (ii) proceed with the hearing in the party's absence.
- 3.17 Where, the relevant committee adjourns the hearing to a specified date it shall, as soon as reasonably practicable, notify the parties of the date, time and place to which the hearing has been adjourned.

4. THE HEARING

Principles to be applied

- 4.1 Subject to paragraph 4.2 and 4.3 below, the hearing shall take place in public.
- 4.2 The Sub-Committee may direct that all or part of a hearing must be held in private if it is satisfied that it is necessary in all the circumstances of the case, having had regard to:
- (i) any unfairness to a party that is likely to result from hearing in public; and
 - (ii) the need to protect as far as possible, the commercial or other legitimate interests of a party.
- 4.3 Issues that involve personal details such as medical conditions or criminal records will normally be held in private session.
- 4.4 Changes to the membership of the Sub-Committee will be announced at the beginning of the hearing.
- 4.5 The hearing will take the form of a discussion led by the Chairman of the relevant committee. As the hearing is not a court:
- (i) strict rules of evidence will not apply (see paragraphs 5.3 below for further details as to evidence).
 - (ii) evidence will not be taken on oath.

- (iii) comments and questions are to be directed through the Sub-Committee Chairman.
- (iv) cross-examination will not be permitted unless the Sub-Committee considers that cross-examination is required for it to consider the representations or application.
- (v) evidence, discussion and address must be relevant to the Act.
- (vi) all representations and other information received from absent parties will be considered.

4.6 The Sub-Committee will have regard to the common law rules of natural justice and the Human Rights Act 1998 when exercising its decision-making functions, with particular reference to Article 6 of the European Convention of Human Rights which provides that:

“...in the determination of civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”.

4.7 A party may be assisted or represented at the hearing by any person whether or not that person is legally qualified. For the avoidance of doubt, a party may be assisted or represented by their Ward Councillor. However, no member sitting on the relevant sub-committee hearing the case can represent any of the interested parties or applicant.

Procedure at the Hearing

4.8 The order of business shall be at the discretion of the Sub-Committee, but will normally proceed in accordance with the following paragraphs or as shown in the flow chart attached at *Appendix 1*:

4.9 The Chairman shall at the beginning of the hearing introduce the members of the sub-committee, invite the parties to identify themselves and then explain to the parties the procedure that the Sub-Committee intends to follow.

4.10 The Street Scene Enforcement Team Officer will then be invited by the Chairman to present the relevant details of his/her report (referred to in paragraph 3.11 above), and any other information regarding any details relevant to the application or representations which may have come to light since the report was written. Alternatively, the Chairman may proceed directly to paragraph 4.11 below.

- 4.11 Parties or their representatives will normally be invited to address the Sub-Committee in the following order:
- (i) Applicant
 - (ii) Objectors
- 4.12 Where there is more than one objection raising the same or similar grounds, the Chairman will encourage parties to agree that only one party address the Sub-Committee on behalf of the parties who have made the representations in question.
- 4.13 Each party shall be entitled to:
- (i) address the Sub-Committee or call witnesses
 - (ii) provide further information on, or explanation of, any matter on which the licensing authority has indicated that it would want further clarification under paragraph 3.7(vi) above.
 - (iii) subject to paragraph 4.4(iv) above, question any other party or person representing a party on any matter that is relevant to the application, or representation made on the application, where in all the circumstances the sub-committee considers it is appropriate to do so.
- 4.14 The Sub-Committee will take into consideration documentary or other information in support of the application or objections produced by a party:
- (i) before the hearing; or
 - (ii) at the hearing, with the consent of all other parties attending the hearing.
- 4.15 At any time during the hearing, parties or their representatives or any of their witnesses may be asked questions upon their presentation or evidence by any member of the sub-committee.
- 4.16 At any time during the hearing, the Sub-Committee may decide to adjourn hearing to the earliest possible date or to a later time on the same date in order to conduct a site inspection of the relevant application. All site inspections will preferably be conducted in the presence of all parties to a Hearing. A party to a hearing may decline to attend such a site inspection. In such a situation, the site inspection may take place in the absence of the relevant party.

- 4.16 The parties shall be entitled to make closing submissions and will normally be invited to do in the following order:
- (i) Street Scene Enforcement Officer
 - (ii) Objector
 - (iii) Applicant
- 4.17 The Sub-Committee may place a time limit on a party's speaking rights as set out in paragraphs 4.13 and 4.16 above, but all parties shall be allowed an equal maximum period of time.
- 4.18 The Sub-Committee may require any person who in his/her opinion is behaving in a disruptive manner to leave the hearing and may refuse to permit that person to return or to return upon complying with such conditions as the relevant committee may specify. However, any such person will be allowed to submit any evidence in writing that they proposed to give orally, provided they do so before the end of the hearing.
- 4.19 At the conclusion of evidence and closing submissions, the Sub-Committee will adjourn into closed session in order to deliberate and reach a decision. During this process only the Legal Adviser and Committee Clerk will remain with them.
- 4.20 If, during its deliberations, the Sub-Committee considers that it is necessary for any person present at the hearing to provide further information or clarification on a particular point, the hearing may be re-convened to deal with that issue before reaching a decision.

Role of Legal Advisor

- 4.21 The Sub-Committee may seek advice or clarification of any procedural, technical or legal matter from the legal adviser at any time during the course of the hearing.
- 4.22 The legal adviser will provide the Sub-Committee with any advice it requires properly to perform its functions whether or not the Sub-Committee requested that advice, on:
- (i) questions of law or of mixed fact and law;
 - (ii) matters of practice and procedure;
 - (iii) the range of options available to the Sub-Committee;
 - (iv) Relevant national guidance, policy or codes;
 - (v) Other issues relevant to the matter before the Sub-Committee;
 - (vi) The appropriate decision-making structure to be applied in any given case.

- 4.23 The legal adviser may ask questions of witnesses and the parties in order to clarify the evidence and any issues in the case. The legal adviser is under a duty to ensure that every case is conducted fairly.
- 4.23 The legal adviser will play no part in making findings of fact but may assist the Sub-Committee by reminding it of the evidence taken from his/her own or the committee clerk's notes.
- 4.25 The legal adviser will assist the Sub-Committee where appropriate as to the formulation of reasons and the recording of those reasons.

5. THE DECISION

Principles to be applied

- 5.1 Each application will be determined on its own merits and the Sub-Committee shall make its decision based upon the merits of the individual circumstances of each case and its considerations shall be restricted to the evidence placed before it (see paragraph 5.3 and 5.4 below on how evidence will be assessed);
- 5.2 All decisions reached by a Sub-Committee shall be supported by reasons and a summary of the relevant evidence supporting those reasons. All decisions reached by the Sub-Committee must comply with the Act.

Evidence

- 5.3 While court rules of evidence will not strictly apply, they will, however, be followed to a great extent because Sub-Committee decisions must be based upon an objective assessment of the evidence. Hearsay evidence is permitted but will be given less weight than direct evidence. Evidence given in person where the testing of that evidence is possible through questioning, or cross-examination if appropriate, is likely to be given more weight than evidence or representations which are presented only in writing.
- 5.4 If the Sub-Committee considers that the evidence of a party is not relevant to the issue(s) to be decided, it shall be disregarded.

Time Limit

- 5.6 The relevant Sub-Committee shall determine the application on the last day on which the hearing was held. So, if the hearing finishes on a Monday, the determination must occur on the same day.
- 5.7 A verbal decision is given to the public at the end of the hearing or at the end of the relevant agenda item.

6. AFTER THE HEARING

Notification of Decision

- 6.1 After the hearing, formal notice of the Sub-Committee's decision and related information, such as any conditions that may be imposed on the street trading licence, shall be communicated to all parties to the proceedings, in writing, within 5 working days of a verbal decision being given.
- 6.2 The decision notice shall further point out that if the applicant (who is also the holder of a Permanent Street Trading Licence) is dissatisfied with the decision of the Sub-Committee there is a right of appeal to the Registrations and Appeals Committee which must be exercised within 21 days from the date of receipt of the written notice of decision.
- 6.3 All decisions upon an application shall further be published for viewing on the Council's official website.

ORDER OF PROCEEDINGS

**Introduction by the
Council's Street Scene
Enforcement Team Officer**



The Street Scene Enforcement Officer will introduce the report and will outline impartially the matter before the Sub-Committee, giving any relevant background information.

The Applicant (if present)



The applicant presents their case and brings forward any witnesses. Members of the Sub-Committee or the Legal Adviser may ask questions to clarify evidence given.

**Objectors (if any
objections are made)**



The Objectors present their case, including any written correspondence and/or calling any witnesses in support of their objections. Members of the Sub-Committee or the Legal Adviser may ask questions to clarify evidence given.

OPTIONAL - DISCUSSION LED BY THE CHAIRMAN

A discussion may occur if there is a need for the parties involved to clarify each other's cases. At this point parties may ask questions of each other on any matter relevant to the application or any representations.



**Closing Submissions from
Each Party**

The Street Scene Enforcement Officer, Applicant and Objectors make brief closing submissions on the application for decision. The applicant makes the final closing remarks.



**Sub-Committee
Deliberates**

The Sub-Committee will remain in the room to deliberate and make their decision, with only the Legal Advisor and Clerk to the Committee remaining. All other present will be asked to leave the room.



**Chairman may announce
Decision**

Parties may return to the room when asked and the Chairman announces the decision. The Chairman reminds the applicant that the decision will be sent to them in writing. There can be no further questions or statements