

DRAFT STREET TRADING HEARING PROTOCOL

Committee	Licensing Committee
Officer Contact	Beejal Soni, Legal Services
Papers with report	Appendix 1: Draft Street Trading Hearing Protocol
Ward(s) affected	All

HEADLINE

To request authorisation from the Licensing Committee to consult on an updated Street Trading Hearing Protocol.

RECOMMENDATION

1. That the Licensing Committee considers the proposed Street Trading Hearing Protocol;
2. That, subject to any changes required by the Licensing Committee, the Regulatory Services Manager be authorised to begin a 28 day consultation on the introduction of a new hearing protocol for Street Trading applications.
3. That whilst a delegated function of the Committee, the portfolio Cabinet Member for Finance, Property and Business Services be informed prior to the consultation taking place by Regulatory Services.

SUPPORTING INFORMATION

On 08 June 2011 the Licensing Committee approved urgent and non-urgent hearing procedures for Street Trading applications.

In December 2015, Cabinet approved the updating of the Council's Street Trading and Markets Policies. Officers subsequently reviewed existing hearing procedures in order to ensure that no conflict existed with the newly revised policies.

It has been concluded that the Street Trading Hearing Protocol requires a full revision because:

1. Licensing Sub-Committees now comprise 3 rather than 5 Members;
2. Applications which were regarded as urgent are now subject to longer application timescales. It is therefore unlikely that the Sub-Committee will be required to hear Urgent Street Trading applications;
3. The revised Street Trading Policy and Street Trading Hearing Protocol will provide a more efficient process for traders and officers of the Council.

The suggested new Street Trading Hearing Protocol is attached to this report marked Appendix 1 for Members' consideration.

Section 24(3B) of the London Local Authorities Act 1990 permits the Licensing Committee to prescribe the procedure to determine street trading applications. However, before the procedure is introduced, a 28 day consultation must be held with traders and/or their representatives on the proposed hearing procedure.

In the event that the Licensing Committee accepts the recommendation, the Cabinet Member will be briefed as licensing policy generally falls under his remit and then a 28 day consultation will be held with traders and/or their representatives. The results of this consultation will be reported back to the Licensing Committee on 13 July, along with a proposed final version of the hearing protocol for adoption.

Implications on related Council policies

None at this stage.

Legal implications

Legal comments are contained within this report.

Financial Implications

None at this stage.

Background Papers / Further Reading Material

NIL



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Draft Street Trading Hearing Protocol

This protocol outlines the procedures that will be followed in relation to hearings held under the London Local Authorities Act 1990 to consider the grant or renewal or variation or revocation of a Street Trading Licence

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1. Introduction

- 1.1 Part III of The London Local Authorities Act 1990 (hereinafter referred to as "the Act") provide that a Council shall determine for itself the procedure to be followed at a hearing.
- 1.2 These procedures set out the way in which the Licensing Authority (hereinafter referred to as "the Authority") will conduct hearings under the Act for the grant or renewal or revocation or variation of a permanent or temporary Street Trading Licence.

2. Timescales

- 2.1 A Licensing Sub-Committee may not refuse to grant or renew or vary or revoke a street trading licence unless the Licensing Officer has given least 21 calendar days' notice in writing to the trader that representation(s) has/have been received and advising the trader of the grounds on which the decision will be based.

3. Timescales for Notice of Hearing to be given

- 3.1 The Authority shall give the formal Notice of Hearing no later than 5 clear working days before the first day on which the hearing is to be held.
- 3.2 Where a hearing will take more than one day, the Authority must arrange for the hearing to take place on consecutive days.

4. Persons who must be notified of a hearing

- 4.1 The persons who must be notified of a hearing are set out below as a summary:
 - The Trader or proposed trader in an application for the grant, renewal or variation of a licence;
 - Any applicant for the variation or revocation of a licence issued under Part III of the London Local Authorities Act 1990;
 - Any person who has made representations about an application for the grant or renewal or variation or revocation of a licence.

5. Information to be provided in a Notice of Hearing

- 5.1 The information and documentation that must accompany the Notice of Hearing relating to an application for the grant or renewal or variation or revocation of a licence includes:

- The agenda for the meeting, containing the Licensing Officer report;
- The procedure to be followed at the hearing;
- The method and time limit by which a party may inform the Sub-Committee of their intention to attend and/or to be assisted or represented by any person whether legally qualified or not;
- The right to question any other party;
- The right to address the Authority;
- The method and time limit by which a party may call witnesses to give evidence at the hearing
- The consequences if a party does not attend or is not represented at the hearing.

5.2 The Notice of Hearing will ask all parties to attend a briefing session 20 minutes before the hearing begins. At this briefing the Council's Legal Advisor will be available to answer questions or provide any clarification.

5.3 The Authority's Licensing Officer will prepare a report for the consideration by the Committee. This will be sent to the Trader with the Notice of Hearing.

5.4 The report prepared by the Authority's Licensing Officer will contain details of any objections received related to an application for the grant or renewal or variation or revocation of a street trading licence. The report will also provide the grounds upon which the decision of the Sub-Committee will be based.

6. Notice of Reply

6.1 On receipt of the Notice of Hearing, all parties must inform the Authority no later than 1 working day before the date of the hearing whether they:

- Intend to attend or be represented at the hearing;
- Wish to request that another person appear at the hearing (other than their representative) as a witness. If such a request is made, it should be accompanied by details of the name of that person and a brief description of the point or points about which that person may be able to assist the hearing.

6.2 Each party should send the Notice of Reply to the Democratic Services Department, London Borough of Hillingdon, Civic Centre, Uxbridge, Middlesex, UB8 1UW. The Notice of Reply will specify the deadline for sending it back to the Council.

7. Failure of parties to attend the hearing

7.1 If a party has informed the Authority that they will not be attending or be represented at the hearing it may proceed in their absence.

7.2 If a party does not give notice that they will not be attending but fails to attend and is not represented the Authority may either:

- (a) Adjourn the hearing if it considers it to be necessary in the public interest; or
- (b) Hold the hearing in the party's absence.

- 7.3 If the Authority holds the hearing in the absence of a party, it will consider at the hearing the application, the representation or notice previously submitted by the party.
- 7.4 If the Authority adjourns the hearing to a specified date it must forthwith notify the parties of the date, time and place to which the hearing has been adjourned.

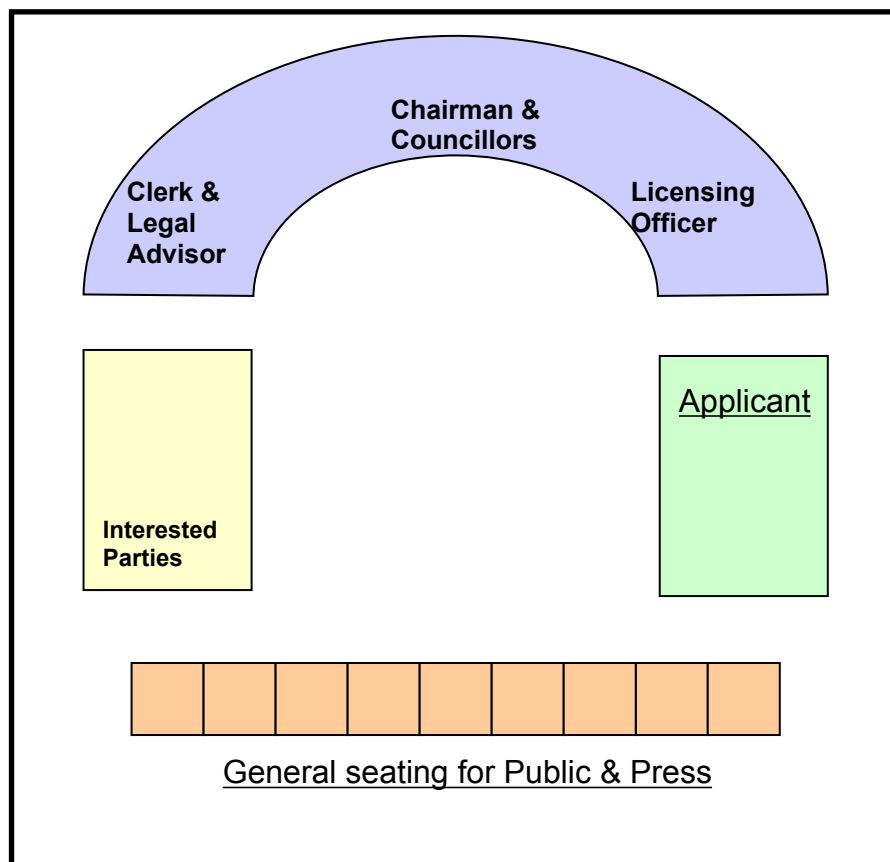
8. Procedure at the hearing

8.1 Composition of Sub-Committee

8.2 The Sub-Committee will, usually consist of three members appointed from members of the Authority's Licensing Committee.

8.3 No business shall be transacted unless at least two members of the Sub-Committee are present and able to form a properly constituted Sub-Committee.

8.4 The usual room layout for the hearing will be as outlined below:



8.5 The usual order of proceedings will be as set out below:

Order of proceedings

The Chairman of the Sub-Committee will open the hearing by introducing the Councillors, explaining the purpose of the proceedings and the general procedure. The Chairman will then check that there are no additions or alterations to the list of those appearing at the hearing.

**Introduction by the
Regulatory Services**

The Licensing Officer will introduce the report and will outline the matter before the Sub-Committee, giving any relevant background information. Members may ask questions of the officer.

The Applicant

The Applicant or the person representing him/her will be invited to address the Sub-Committee. The Sub-Committee may ask questions.

**Any Officer who has
submitted representations**

Officers of the Council and/or any Officer who performs an enforcement function in relation to the Act will be invited to address the Sub-Committee. Councillors may ask questions of the Responsible Authorities.

**Interested Parties etc... who have
submitted representations**

Interested Parties will be invited to address the Sub-Committee. Where there are a number of parties making similar representations the Chairman may ask the parties to nominate a spokesman to make the representations. The Sub-Committee may ask questions.

DISCUSSION LED BY THE SUB-COMMITTEE

The Chairman will lead the discussion. This will be a chance for all parties to provide comments on any submissions that have been made to the Sub-Committee.

**Closing remarks from
each party**

The Chairman will invite the parties to the hearing, in reverse order, to make brief closing remarks on the application. 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 the Clerk to the Sub-Committee remaining. All others present will be asked to leave the room.

**Chairman announces the
decision**

Parties may return to the room when invited to do so and the Chairman will announce the decision. The Chairman will remind the Applicant that the decision will be sent to them in writing. There can be no further questions or statements.

- 8.6 The Sub-Committee may allow the parties to question any other party (if permission is given) and to address the relevant committee, but will seek in all cases to avoid repetition of matters (whether included in written material or otherwise) irrelevancy or any abuse of procedure.
- 8.7 The Sub-Committee will be guided by legal principles by determining whether evidence is relevant and fairly admissible. In particular, hearsay evidence may be admitted before the Sub-Committee but consideration will always be given to the degree of weight, if any, to be attached to such evidence in all the relevant circumstances.
- 8.8 When considering any representations or notice made by a party, the Authority may take into account documentary or other information produced by a party in support of their application, representation or notice, either:
- (a) Before the hearing; or
 - (b) With the consent of all other parties at the hearing.
- 8.9 If documentary or other evidence is submitted late or at the hearing, the Sub-Committee may decide to adjourn the hearing so as to allow Members and any other party time to consider the information and that may involve an adjournment of proceedings to another date. The Sub-Committee may decide not to consider the information if no satisfactory explanation is provided for its late submission.
- 8.10 Any party may withdraw their representations by contacting the Democratic Services Department by phone, letter or email, providing they give notice no later than 24 hours before the first day of the hearing. If, during the hearing, any party wishes to withdraw their representations they may do so orally by informing the Chairman.
- 8.11 A hearing under the Act shall take place in public save that:
- (a) The Sub-Committee may exclude the public from all or part of a hearing where it considers that, on balance, it is in the public interest to do so;
 - (b) The parties and any person representing them may be excluded in the same way as another member of the public.
 - (c) The Sub-Committee may exclude the public from all or part of a hearing where it is satisfied that there is a need to protect as far as possible, the commercial or other legitimate interests of a party to the hearing.
- 8.12 The Sub-Committee may require any person attending the hearing who in their opinion is behaving in a disruptive manner to leave the hearing and may:
- (a) Refuse to permit the person to return; or
 - (b) Allow them to return only on such conditions as the Authority may specify.

- 8.13 Any person excluded may, before the end of the hearing, submit to the Sub-Committee in writing, any information which, they would have been entitled to give orally had they not been required to leave and the Sub-Committee will take that information into account in reaching a determination of the application or review.
- 8.14 In order to ensure fairness to the Parties and/or in the interests of the proper consideration of the matter in question, the Sub-Committee may waive, vary or modify any part or the whole of these rules in any particular case.
- 8.15 The Chairman of the Sub-Committee has the power to extend time where it is appropriate to do so in the interests of the determination of the case.

9 Determination of the application and time limits

- 9.1 The Sub-Committee will endeavour to make its determination and provide a summary of the reasons for its decision at the conclusion of the hearing. A written decision notice shall be provided to all parties to the hearing within 5 working days of the last day of the hearing.
- 9.2 Where the Sub-Committee has not made a decision immediately following the conclusion of the hearing, the Sub-Committee will make its decision within 5 working days of the last day of the hearing. The Authority will notify the parties to the hearing of the decision in writing as soon as reasonably practicable after the decision has been made.

10 Record of Proceedings

- 10.1 The Authority must arrange for a record to be taken of the hearing in a permanent and intelligible form and for that record to be kept for six years from the date of determination. Where an appeal is brought against a determination by the Authority, the record must be kept for six years from the date of disposal of the appeal.

11 Irregularities

- 11.1 Proceedings will not be rendered void only as the result of failure to comply with any provision of the Regulations.
- 11.1 Where the Authority considers that any person may have been prejudiced as a result of an irregularity relating to the Regulations, it will take such steps, as it thinks fit to cure the irregularity, before reaching its determination.
- 11.2 Clerical mistakes in any document recording a determination of the Authority or errors arising in such a document as a result of an accidental slip or omission may be corrected by the Authority.

12 Notices

12.1 Any notices under these regulations will be given in writing. Such a notice may be sent electronically, providing:

- (a) It can be accessed by the recipient in a legible form;
- (b) It is capable of being reproduced as a document for future reference;
- (c) The recipient has agreed in advance to receive it in such form;
- (d) A copy is sent in documentary form forthwith to the recipient.

13 Appeals.

13.1 Either those that have made an application or those who have made representations on an application may have the right to appeal the Authorities decision to the Magistrates' Court.

13.2 An appeal must be commenced within twenty one days of receipt of the written decision notice following the outcome of the Sub-Committee hearing.

13.3 Appeals may only be submitted in relation to permanent street trading licences. There is no appeal process for applications for temporary street trading licences.

13.4 The Notice of appeal should also be sent to the Authority's Legal Services Department.

14. Other information and contact details.

14.1 The minutes of a hearing will be made available on the Council's website at: www.hillingdon.gov.uk

14.2 All applications once they are lodged will be available for viewing on Hillingdon Council's website at www.hillingdon.gov.uk and in the Civic Centre Offices by appointment with the Regulatory Services Department during working hours.

14.3 The address and contact details for Democratic Services are:

Clerk to the Committee
Democratic Services
3E/05
Civic Centre
Uxbridge
UB8 1UW Tel: 01895 250636 or email democratic@hillingdon.gov.uk

14.4 The address and contact details for Legal Services are:

Legal Services Department, 3E/04, London Borough of Hillingdon, Civic Centre
Uxbridge, UB8 1UW
DX: 45101 Uxbridge