

## STREET TRADING

<b>Committee</b>	The Licensing Committee
<b>Officer Contact</b>	Beejal Soni, David Frost, Bill Hickson
<b>Papers with report</b>	Appendix A: Draft Rules of Procedure for Licensing Sub-Committee Hearings on Street Trading Applications & Street Trading Regulations

### HEADLINE INFORMATION

<b>Purpose of report</b>	To advise Members of a decision by Council to extend the powers of the Licensing Committee; To recommend that Members authorise the Licensing Sub Committees to consider and determine all Street Trading applications
<b>Contribution to our plans and strategies</b>	This report contributes to the Council's priorities for a Clean and Attractive borough, its Sustainable Community Strategy and for Opportunities Open to All.;
<b>Financial Cost</b>	Any cost consideration is expected to be absorbed within existing budgets
<b>Relevant Policy Overview Committee</b>	Not Applicable
<b>Ward(s) affected</b>	All

### RECOMMENDATION

The Licensing Committee is asked:

1. To note that the Council of the London Borough of Hillingdon has granted Licensing Committee the necessary powers to determine all street trading applications;
2. To authorise Licensing Sub Committees to consider and determine all Street Trading applications made under Part III of the London Local Authorities Act 1990 (as amended)
3. To approve the draft Rules of Procedure for Licensing Sub-Committee Hearings on Street Trading Applications as attached at Appendix A.

### INFORMATION

## **Reasons for recommendation and urgency**

This report was prepared as a consequence of Hillingdon Council's decision on 14 January 2010 to authorise the Licensing Committee to consider and determine all Street Trading applications made under the London Local Authorities Act 1990 (as amended). The Licensing Committee is advised to urgently take the necessary steps to give effect to these new powers.

The majority of street trading licences currently in operation are due to expire on 31 March 2010. In order to prevent inconveniencing traders and to ensure that street trading licences do not lapse, the Licensing Committee is advised to urgently authorise Licensing Sub-Committees to consider and determine Street Trading Applications.

In order to ensure that hearings are conducted in a fair and transparent manner, it is recommended that the procedure detailed in Appendix 1 of this report is approved.

## **Alternative options considered / risk management**

No alternative decision is available. Any delay in adopting the recommendations will unfairly prejudice traders by preventing the timely renewal of existing licences.

## **Supporting Information**

### **Part III of the London Local Authorities Act 1990 (as amended) ["the Act"]**

In 1993, the London Borough of Hillingdon implemented Part III of the London Local Authorities Act 1990 (as amended) in order to effectively control and regulate street trading activities in the borough. As part of the programme of implementation, street trading in designated streets would have to be licensed, with the Council being awarded powers to consult and introduce street trading licence terms and conditions. To date, the terms and conditions introduced in 1993 have not been updated or amended.

A simple definition of Street Trading is any trading activity which takes place on designated streets within 7 metres of the public highway. As per the definition in the legislation, Street Trading activity includes the placing of shop displays and tables and chairs on public property within 7 metres of the highway.

The Act regulates various aspects of the trading activity including enforcement action that may be taken, rules relating to the trading stalls, registration requirements for new application and renewals, mandatory grounds for the rejection of an application and appeal rights of traders. The Act further makes allowances for the issue of temporary and permanent licences. Temporary Licences are valid for a maximum period of 6 months whilst permanent Licences are valid for more than 6 months but less than 3 years.

## **Changes to Street Trading Regulations and Processes In the London Borough of Hillingdon**

As a result of the implementation of a service review in 2008, Street Trading services were transferred to the Street Scene Enforcement Team.

A review of Street Trading services in 2009 highlighted the need to update the existing terms and conditions for street trading licences. It also suggested the implementation of various

powers which will improve the enforcement of matters related to street trading, tables and chairs and shop displays on the highway.

In order to ensure greater transparency in the street trading licensing process, and as a result of a public consultation exercise undertaken by the Street Scene Enforcement Team, the Council delegated to the Licensing Committee the power to determine Street Trading Applications. Policy issues related to Street Trading matters remain the remit of the Cabinet.

Consequently, it is anticipated that Licensing Sub-Committees will determine matters related to new applications for a Street Trading Licence and applications for the renewal / variation / revocation of an existing Street Trading Licence.

Various recommendations related to policy issues are due to be discussed at Cabinet level on 21 January 2010. Up to date information regarding Street Trading licence terms, conditions and street designation will be provided immediately following the Cabinet meeting. In the interim, a copy of the relevant Street Trading legislation has been provided to Members.

The Act requires that any change implemented by Cabinet be advertised for a period of at least 28 days before coming into effect. Consequently, it is anticipated that any changes decided by Cabinet will come into effect on 26 February 2010.

Major renewal exercises of Street Trading Licences will be undertaken in March and September of every calendar year.

Members are asked to note that as a result of the Notice periods involved with advertising the applications for renewals and hearings, it is likely that for this renewal period only, all Street Trading Hearings for renewals will take place in the last week of March 2010.

Members are advised that there are currently 193 street traders licensed to the London Borough of Hillingdon. Following the implementation of new regulations in February 2010, a rise in Street Trader numbers is anticipated. Seventy-five (75) licences will require renewal hearings before 31 March 2010. Members are therefore advised that it is likely that additional Sub-Committee hearing dates will be arranged between 25 March and 31 March 2010. The remainder of temporary licences (expected to be approximately 110) will be considered during the financial year as they are submitted.

### **Draft Implementation Timetable**

It is anticipated that all Licensing Committee Members will receive training on Street Trading Legislation and Regulations in February 2010.

The following draft timetable is being worked on in order to effect timely implementation of the changes detailed above:

- 1) **26 February 2010:** Changes to Street Trading Licensing and Regulations come into effect;
- 2) **26 February onwards:** Street Scene Enforcement Team receives applications for renewal of Street Trading Licences;

- 3) **26 February – 10 March 2010:** Applications received will be advertised for objections;
- 4) **11 March – 16 March 2010:** Notice of Hearings and Agenda published by Democratic Services
- 5) **25 March – 31 March 2010 :** Licensing Sub-Committee meetings take place to determine applications to renew Street Trading licences.

### **Rules of Procedure for Licensing Sub-Committee Hearings on Street Trading Applications**

As a result of the short lead-in time for the implementation of the changes, Members are requested to consider and approve the attached draft rules of procedure that will apply to all Street Trading Licences.

The relevant points of procedure to note are:

1. Hearings will take place as soon as reasonably possible. Every attempt will be made to ensure that the hearings take place within 10 working days of the end of the period within which objections are lodged;
2. Hearings will be conducted in the same manner and as per the principles and evidentiary rules currently in place for Licensing Act 2003 hearings;
3. There will be no officer delegation to decide matters where no objections are received – Members will therefore be responsible for determining all Street Trading applications;
4. A member of the Street Scene Enforcement Team will present the Sub-Committee with the relevant application report;
5. In the event of an opposed application, a Sub-Committee may adjourn hearings in order to conduct a site inspection;
6. Correspondence advising traders of the outcome of the hearing will be despatched within 5 working days of the hearing;
7. As is permitted by the Licensing Act 2003, Ward Councillors may address the Sub-Committee in their capacity as Ward Councillors or on behalf of an objector/group of objectors on condition that relevant notice is provided to Democratic Services.

It is expected that a simple process guide for members of the public will be prepared in due course.



HILLINGDON  
LONDON

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

## Rules of Procedure for Licensing Sub-Committee Hearings

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### 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

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#### 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**

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### **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

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### 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**

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### **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**

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## **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

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



**The Applicant (if present)**



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



**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**



**Sub-Committee Deliberates**



**Chairman may announce Decision**

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 presents their case and brings forward any witnesses. Members of the sub-committee or the Legal Adviser may ask questions to clarify evidence given.

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

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

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.

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

