

STREET TRADING POLICY

Committee	The Licensing Committee
Officer Contact	Beejal Soni
Papers with report	Appendix A: Draft Rules of Procedure for Urgent Licensing Sub-Committee Hearings on Street Trading Applications

HEADLINE INFORMATION

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

RECOMMENDATION

The Licensing Committee is asked:

- 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

On 19 January 2010 the Licensing Committee approved Rules of Procedure to enable its Sub Committees to determine applications for Street Trading Licences.

This report proposes Rules of Procedure to determine certain specified and urgent applications for Street Trading Licences within a shortened time frame

In order to ensure that hearings are conducted in a fair and transparent manner, it is recommended that the procedure detailed in Appendix A 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 who, for reasons out of their control, require a determination of the applications within a shorter time frame.

Supporting Information

Part III of the London Local Authorities Act 1990 (as amended) [“the Act”]

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.

Cabinet and the Street Scene Enforcement Team have recognised that there are certain situations which arise during any trading period which may require licences to be issued urgently. These situations may include but are not limited to:

1. Applications for charitable street trading;
2. Applications for street trading linked to community events, for example, fairs
3. Applications linked to Shop Front or Tables and Chairs Licences which seek to amend / vary the named Licence Holder;
4. Applications for pitch licences which seek to amend / vary the assistants licensed to the pitch;
5. Any other unopposed application which the relevant Council Officer considers to be urgent.

Any existing trader who fails to submit the a Street Trading application within advised timescales may not use of urgency procedures to determine the application unless the Council Officer is satisfied that the lateness is due to exceptional circumstances.

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

Members are requested to consider and approve the attached draft rules of procedure that will apply to all urgent Street Trading Licences.

The relevant points of procedure to note are:

1. Hearings will take place within 72 hours of Democratic Services receiving a report related to an unopposed application for a street trading licence or variation of a street trading licence from the relevant Council Officer.
2. The Council Officer shall detail in the body of the report the reasons for urgency.
3. The quorum for urgent hearings related to Street Trading Applications shall be 2 members of the Licensing Committee; one of whom shall be a chairman of the Licensing Sub-Committee;
4. Hearings will be conducted in the same manner and as per the principles and evidentiary rules currently in place for Licensing Act 2003 hearings;
5. Correspondence advising traders of the outcome of the hearing will be despatched within 5 working days of the hearing;
6. 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.

The Public Bodies (Admission to Meetings) Act 1960 requires that the urgent meeting of the Licensing Sub-Committee must be conducted in a manner that will permit members of the public to attend the scheduled meetings. A Sub-Committee meeting should therefore be convened.

It will not be possible to determine such urgent applications on papers alone. A public consultation is required prior to introducing an alternative decision making process for urgent applications.



HILLINGDON
LONDON

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

Rules of Procedure for Urgent 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 hearing urgent applications for street trading licences 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.

- 1.4 Urgent applications to be determined in accordance with this procedure shall include but is not limited to:
 - a. Applications for charitable street trading;
 - b. Applications for street trading linked to community events, for example, fairs
 - c. Applications linked to Shop Front or Tables and Chairs Licences which seek to amend / vary the named Licence Holder;

- d. Applications for pitch licences which seek to amend / vary the assistants licensed to the pitch;
- e. Any other unopposed application which the relevant Council Officer considers to be urgent.

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 urgent 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 two 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 using this procedure, Section 100A of the Local Government Act 1972 permits a Sub-Committee meeting to be convened with less than five clear days notice.

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 an urgent hearing is to be held. It is expected that a hearing will to be commenced within 72 hours of Democratic Services receiving a report related to an unopposed application for a street trading licence / variation of a street trading licence from the relevant Council Officer

Notice Procedures

- 3.2 In order to hold a fair and transparent hearing, the relevant Council division 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

- 3.3 Notice shall given as soon as possible by Democratic Services to all parties to the hearing specifying the date, time and place at which the hearing is to be held.
- 3.4 The Notice of Hearing shall be accompanied by information in writing regarding the following:
- (i) This procedure note, confirmation from the relevant Council Officer that the matter is unopposed and details of the application as provided by the relevant Council Officer.
 - (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.

Street Scene Enforcement Team Officer's Report

3.5 A report on the application to be determined will be presented at the hearing by the relevant Council Officer, which will contain a summary of the application, their technical observations and recommendations.

Consequences of failure to Attend Hearing

3.6 The sub-committee committee may proceed with a hearing in the absence of the Applicant.

3.7 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.

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
 - (ii) comments and questions are to be directed through the sub-committee Chairman.
 - (iii) cross-examination will not be permitted unless the sub-committee considers that cross-examination is required for it to consider the representations or application.
 - (iv) information, discussion and address must be relevant to the Act.
- 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 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.
- 4.9 The relevant Council 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 4.10 below.

- 4.10 The Applicant (s) or their representatives will normally be invited to address the sub-committee.
- 4.11 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.
- 4.12 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.
- 4.13 At any time during the hearing, parties may be asked questions upon their presentation or evidence by any member of the sub-committee.
- 4.14 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) Applicant
- 4.15 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.
- 4.16 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.

4.17 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

4.18 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.

4.19 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.

4.20 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.

4.21 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.

4.22 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.

Time Limit

- 5.3 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.
- 5.4 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 All decisions upon an urgent application shall further be published for viewing on the Council's official website.

