

APPENDIX

HARINGEY COUNCIL

RULES OF PROCEDURE

NON-EXECUTIVE LICENSING FUNCTIONS

RULES OF PROCEDURE AT HEARINGS BEFORE THE SUB-COMMITTEE IN CASES OF OBJECTION TO THE GRANT, RENEWAL, TRANSFER, VARIATION OR REVOCATION OF LICENCES, PERMITS OR REGISTRATIONS

JANUARY 2011

**RULES OF PROCEDURE AT HEARINGS BEFORE THE SUB COMMITTEE
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INTERPRETATION

1. In these rules:-

“Licence” means any licence, consent, permit or registration which the Council is required or permitted by statute to grant, issue or make pursuant to statutory regulatory functions which are for the time being designated as “non-executive” functions outside the remit of the Council’s Executive/Cabinet or its statutory Licensing Committee.

“Licensee” means the holder of such a licence.

“Applicant” means the applicant for, or the holder of, such a licence.

“Application” means an application for one or more of the following, as the case may be:

- (a) grant of a licence;
- (b) transfer of a licence
- (c) renewal of a licence;
- (d) variation of a licence (including waiver or modification of a licence condition).

“Objector” means any person who has given Notice in accordance with Rule 5 hereof and who has complied with its terms.

“Parties” means the applicant(s), any objector(s) to the grant of the application, including any Council Officer, in circumstances where (s)he is making formal objection or seeking revocation.

“Premises” means the place for which a licence is sought or for which a licence is in force.

“Revocation” means the revocation of a licence or a proposal to revoke a licence under any statutory provision. In this case, these Rules shall apply as if the officer seeking revocation were the applicant and the holder of the licence were the objector, unless the context otherwise requires.

“The Lead Licensing Officer” means the Council’s Lead Licensing Officer”, or in the event that this post is deleted or re-named, the officer whose post most nearly fills the duties of the Lead Licensing Officer or a representative of the Lead Licensing Officer.

“Council” means Haringey Council.

“Sub Committee” means the Miscellaneous Functions Sub Committee, or in the event of a re-organisation of responsibilities, the body that has responsibility for the discharge of non-executive licensing functions.

COMPOSITION OF THE SUB COMMITTEE

2. A Councillor for the Ward in which the applicants’ or objectors’ premises are situated shall not sit on the Sub Committee when that application is to be considered.

APPLICATION FORMS

3. An application for a licence shall be made on the form provided by the Council. The form of application shall be signed by the applicant, or a solicitor or other duly authorised agent acting on behalf of the applicant.

Note: A copy of these rules should be supplied to any potential applicant with the forms for application.

APPLICANTS

4. Applicants, including directors of companies, shall disclose their normal residential address either on the form provided by the Council or in accompanying correspondence but this address need not be disclosed on any public notice.

HOW TO OBJECT

5. Subject to any provision of the relevant statute any person who wishes to seek the revocation of a licence or object to an application shall write to the Lead Licensing Officer giving in detail the reasons for objection. The Council is only able to accept anonymous objections in exceptional circumstances and subject to the agreement of the Sub-Committee at the hearing.
6. Where a time limit for objections has been set such time limit shall be strictly adhered to as a late application will only be accepted by the Council in the most exceptional circumstances.
7. Within 14 days of the last day for lodging objections where applicable the Lead Licensing Officer shall forward to the applicant a copy of

every valid written objection. In other cases the Lead Licensing Officer shall forward a copy of the objection as soon as possible and in any event at least 10 days (or longer if required by statute) before the day appointed for the hearing of objection. Where a time limit cannot be imposed for receipt of objections the applicant shall be supplied with a copy of any objection as soon as possible prior to the hearing.

8. If an objection is made by an Association it shall be confirmed at any Licensing Hearing that the objection has been formally authorised by that Association. This confirmation should be by the Chair, Secretary or other duly authorised officer of the Association.
9. Petitions shall bear the prayer of that petition on each page and a warning to potential signatories that a copy of the petition will be supplied by the Council to the applicant. Each person signing should also print his /her name and address. Each page of the petition should be dated.
10. The Council will not accept an objection or any individual ground of an objection when it considers that either the objections as a whole or the individual ground is irrelevant to the decision to be reached.
11. Unless the objection relates to the character of the applicant Council officers may seek to mediate between the parties to see if agreement can be reached without the need for a licensing hearing.
12. An opposed application shall be decided at a hearing where evidence (oral and written) is given orally and in public unless the Sub Committee decides otherwise.
13. (a) At any oral hearing in public of an application an objector shall not be allowed to raise any matter not referred to in the written objection lodged by the objector concerned unless there are exceptional reasons for so doing and the objector is able to justify why the new material should be placed before the Sub Committee.

(b) Any such application to introduce new matters will be open to representations by the applicant or their legal representative as to whether such matters should be considered by the Sub Committee. When representations have been made by both parties, the Sub Committee will decide whether the new material should be placed in evidence.

(c) If the objector's application is granted, an adjournment of the hearing may have to be permitted in order to allow the applicant time to consider the new material and respond. In consideration of the extra costs likely to be incurred by all parties occasioned by an adjournment, any application by the objector must demonstrate exceptional grounds before it is granted.

14. At any oral hearing in public of an application the applicant and the objector shall attend in person or, if the application or objection is made by a body corporate, business firm, society, association or other group, a duly authorised representative shall be present who is able to speak on behalf of the body corporate and who, in the case of the applicant, is empowered to supply any undertaking requested by the Lead Licensing Officer or demonstrate that any conditions attached to the licence will be complied with.

Note: All objectors and applicant are reminded of their right to have a legal representative at the Hearing.

15. If any person who has written to the Lead Licensing Officer objecting to the grant etc of a licence fails to attend the oral hearing in public the Sub Committee will hear and consider any evidence and arguments put forward by or on behalf of the applicant in relation to the written objection received. The Sub Committee will take into account, in considering the importance to be attached to the objection, that the objector was not available to be questioned about his statements.

PROCEDURE AT AND AFTER ORAL HEARINGS IN PUBLIC

16. The procedure at the meeting will, in general, be similar to that in a Court of Law. Although the strict rules of evidence will not apply, they will be observed to a great extent because this is the best way of hearing the evidence from all parties. Members may seek clarification of any procedural, technical or legal matter from officers at any time during the proceedings.
17. A report will be put before the Sub Committee, prepared by the appropriate officer of the Council. In addition an appropriate officer will provide a detailed plan of the premises and, where appropriate, an Ordnance sheet indicating the locations of both the objectors and other premises within a suitable radius which are licensed either at night cafes or for public entertainment. A copy of the report will be sent to the applicant in advance of the meeting.

WARD COUNCILLOR'S SUBMISSION

18. The Councillor for the Ward in which the applicants or objectors premises are situated may either:
- (a) Object to an application in accordance with numbers 5 to 15 of these rules or
 - (b) Appear as a witness on behalf of an applicant or objector or
 - (c) Give evidence by way of Ward Councillor's submission as detailed in rule 19 below.

19. If a Councillor for the Ward, who has not made a formal objection, wishes to give evidence, he/she may either address the Sub Committee or may submit written representations in respect of the application regardless of whether or not he/she is an objector called by any party as follows:

- (a) If a Ward Councillor wishes to give oral testimony this will normally be given after the Lead Licensing Officer has introduced the report and called any evidence.
- (b) Before Ward Councillors addresses the Sub Committee they must first make a declaration that they have not previously discussed the application with the Members of the Sub Committee and will take no part in the determination of the application.
- (c) Evidence given by way of oral testimony is subject to questioning by the parties to the application and by members of the Sub Committee.
- (d) If representation is given by way of written submission the Chair will indicate that the Sub Committee will take into account the fact that the submission of the Ward Councillor cannot be tested by questioning.
- (e) Any evidence presented by a Ward Councillor by way of a Ward Councillor's submission shall only relate to those issues already known to the applicant by way of the Report to the Sub Committee or otherwise.
- (f)
 - I. Evidence given by way of written submission under this rule shall be provided to the Lead Licensing Officer at least 7 days in advance of the Hearing.
 - II. Notice of evidence to be given by way of oral testimony under this rule shall be provided to the Lead Licensing Officer at least 7 days in advance of the hearing. If (s)he wishes to raise issues which are not already known to the applicants, such notice shall be in writing and shall set out in general terms the issues to be raised.
 - III. The Lead Licensing Officer shall on receipt of evidence under (i) or a notice under (ii) above send a copy to the applicant as soon as possible and at least 5 days in advance of the hearing.
- (g) If there is an objection to the Ward Councillor's submission, the Ward Councillor and both parties may give their reasons for or

against the submission to the Sub Committee. The Legal Advisor to the Sub Committee also give advice before the Sub Committee decides whether to allow the submission in as evidence. If the Sub Committee decides to hear the submission it may be appropriate to adjourn the proceedings after it has been made so as to allow the party objecting to it time to consider the submission in detail.

Note: It should be noted that Ward Councillor's involvement in a hearing under this rule is limited solely to making representations, i.e. there is no right of questioning of other parties or making a closing address.

ORDER OF PROCEEDINGS

20. At the start of the hearing the Chair will introduce himself/herself and other Members of the Sub Committee.

21. The Chair will then check that there are no additions or alterations to the list of those appearing at the hearing which will have been prepared in advance by the appropriate officer and (s)he will then outline the procedure that will be followed for the remainder of the hearing. The procedure is as follows:

A. The Lead Licensing Officer will introduce the report impartially and will outline the matter before the Sub Committee, giving any relevant background information. S(he) will then call any necessary officer(s) to give factual information (e.g. as to the technical arrangements of the premises). These officers can be questioned by any of the parties present or questioned by members of the Sub Committee on matters relating to their evidence and may be subject to further questioning by the Lead Licensing Officer.

Note: In cases where no conciliation has taken place it may be helpful at this point for the applicant to make a brief opening statement so that all parties may be aware of the applicant's intentions.

B. Any Council officer(s) who are making a formal objection will then be required to present their respective cases and call any evidence in support.

C. All other objectors will then be required to present their cases and call any evidence in support.

D. The objectors present their case by addressing the Sub Committee and/or calling evidence. The objector may address the Sub Committee either before or after calling his/her evidence.

Note: In appropriate cases the Sub Committee may during or at the end of the objector's case wish to establish whether the

objectors are opposed to the application in its entirety or, for example are objecting to the lateness of the hours sought and not to the grant of the licence itself.

- E. The applicant (or representative) is then entitled to address the Sub Committee and call evidence in support of his/her application.
 - F. When the applicant has called his/her evidence the objectors may each make a closing statement. An objector is not entitled to call new evidence at this stage and his closing statement must be limited to commenting on matters raised by the applicant either in the applicant's opening statement or the evidence called in support of the application.
 - G. When the objectors have made their closing statements the applicant (or representative) may make a closing statement to the Sub Committee.
22. Each person giving evidence may be questioned by the opposing party or parties and by Members of the Sub Committee. A person may decline to be questioned but less importance would then be attached to his evidence.

Note: Objectors to an application may not question each other but an objector may question his/her witness(es).

23. When a person gives evidence:

- A. (S)He is first asked to state his/her full name and address.
- B. (S)He either makes a statement or, if appropriate, is questioned by the person calling him.
- C. S(He) may be questioned by the other party or parties or their representative.
- D. Throughout the presentation of the respective cases for the Objector and the Applicant questions maybe put by Members of the Sub Committee.

(Following the questions by Members of the Sub Committee they may have to consider whether another opportunity for further questioning should be afforded to the other party or parties on "new" evidence introduced as a result of the replies to Members' questions).

- E. (S)He may be questioned further (if appropriate) by the person who called him/her. These questions must be limited to matters which have already risen in previous examination or Members' question. This is solely an opportunity to ask questions and not a time to make statements. No new matters may be raised at this stage.

DOCUMENTARY EVIDENCE

24. Documentary evidence on which it is intended to rely shall be submitted to the Lead Licensing Officer not less than 12 days before the date of the Hearing so that it may be included with the report to be submitted to the Sub Committee. If documents are not easy to photocopy on an A4 machine (e.g. photographs) then normally eight copies must be supplied.

25. Where one of the parties wishes to submit a document at the hearing the following procedure should be followed:

A. The party concerned should explain why the document concerned was not submitted in advance.

B. If the Chair accepts the explanation (s)he shall then establish whether the opposing party or parties (or their representatives) have already seen the document and whether they have any objection to its submissions.

C. If the other parties have not previously seen the document the Chair will request that it first be passed to them (or to their representative) so that they can decide whether they object to it being submitted to the Sub Committee and if so the grounds of their objection.

Note: For this purpose it may be necessary to allow time for the study of the document.

D. If there is an objection to the submission of the document both parties may give their reasons for or against the proposed submission to the Sub Committee. The Legal Adviser to the Sub Committee may also give advice before the Sub Committee decide whether to allow the document to be submitted.

Note:(i) In some cases it may be necessary for them to see the document before making a decision.

(ii) Clearly 24 and 25 have to be interpreted flexibly in relation to models, colourboards etc. A party wishing to produce such models etc. should give notice in advance to the Lead Licensing Officer.

26. If there has been no objection to the submission of a document or if the Sub Committee has ruled that it may be submitted, the document will normally be read aloud by the party submitting it or by his/her representative. If the submission is a letter or written statement by someone who is not present and its submission has been opposed by one of the parties, the Chair, (if the Sub Committee have ruled that it should be admitted) will indicate that the weight of evidence

(importance) that the Sub Committee will attach to the document will take into account the fact that the signatory of the letter or the maker of the statement is not present to be questioned. In some cases it may be appropriate to adjourn the proceedings so as to allow the party objecting to the submission time to consider the submission in detail.

Note: At least 8 copies should be provided of any document which is to be submitted at the meeting.

DECISION

27. The Sub Committee may decide to grant the application in whole or in part, to refuse the application, or to make a revocation and if granting or varying a licence, may attach any conditions they consider appropriate.

NOTIFICATION OF A DECISION

28. The Chair will normally announce the Sub Committee's decision in public at the end of the hearing and the reasons for this decision. This decision will then be communicated in writing to the parties as soon as possible after the hearing.

WAIVER OF RULES

29. In any particular case, any of these rules may be waived, altered or modified by the Sub Committee or their Chair or by an officer of the Council acting under delegated powers.

Note: A person refused an application for a licence or a licensee aggrieved by any term, condition or restriction attached to the licence can appeal to a Magistrates Court. The Council is the party who defends any such appeal but the Court rehears all the evidence for and against the grant of the application or the imposition of the term, condition or restriction as the case may be.

A person aggrieved by the order of a Magistrates Court on such an appeal has a right of appeal to the Crown Court.

An objector aggrieved by the decision of the Sub Committee does not have these rights of appeal but is entitled to object again when the licence comes up for renewal or may be called by the Council as a witness on the hearing of any appeal by the applicant.

