

[the words recommended for addition or insertion are shown in italics and underlined]

Part C.9 of the Constitution

HARINGEY COUNCIL – LOCAL LICENSING PROCEDURE RULES FOR HEARINGS UNDER THE LICENSING ACT 2003

Interpretation

1. “Act” means the Licensing Act 2003

“Applicant” means a natural person or other legal entity making any application or giving any notice for any form of licence, certificate, consent or determination in accordance with the Act

“Application” means any type of application or notice for any form of licence, certificate, consent or determination for which provision is made under the Act

“Chair” means the Chair of the Licensing Committee or Licensing Sub-Committee determining the relevant application

“Committee clerk” means the officer(s) instructed by the Head of Members’ Services to attend Licensing Sub-Committee meetings to take the minutes and assist with the proper running of the meetings

“Council” means the Council of the London Borough of Haringey

“Hearings Regulations” means The Licensing Act 2003 (Hearings) Regulations 2005 (S.I. 2005 no. 44)

“Interested party” has the meaning prescribed in the Act

“Legal representative” means the officer(s) instructed by the Head of Legal Services to attend Licensing Sub-Committee meetings to advise on matters of law and procedure

“Licensing Committee” means the Council's statutory Committee under the Act

“Licensing representative” means the officer(s) instructed by the Assistant Director, Enforcement to administer application

procedures and to attend Licensing Sub-Committee meetings to advise on licensing matters

“Licensing Service” means the Service under the Assistant Director, Enforcement responsible for administering the Council’s functions under the Act

“Member” means Haringey Councillor appointed to serve as a Member of the Licensing Committee or a Licensing Sub-Committee as the context requires

“Notice” means any notice made in accordance with the Act, or Regulations made thereunder, in relation to an application

“Objector” means each interested party, responsible authority, other natural person or legal entity who/which has made relevant representations or given any notice in relation to any application

“Party/Parties” means the applicant(s) and/or the objector(s) in relation to any particular application

“Premises” means any premises or land in respect of which an application is made

“Relevant Representation” means any relevant representation made in accordance with the Act, or Regulations made thereunder, in relation to an application

“Responsible authority” has the meaning prescribed in the Act

“Sub-Committee” means a Licensing Sub-Committee to which the Licensing Committee of the Council has delegated powers to determine applications. Unless the context otherwise requires, this shall be interpreted to include the Council’s Licensing Committee when that Committee is hearing an application within its terms of reference.

“Ward Councillor” means a Haringey Councillor representing a Ward within which are located any premises that are the subject of an application.

Scope and Application

2. These Rules apply to all applications made in accordance with the Act, or Regulations made thereunder.

3. These Rules should be read and interpreted in conjunction the Hearings Regulations and the Act.

Pre-Hearing Procedure

4. The Licensing Service will notify the relevant Ward Councillors of each application, notice or relevant representation relating to premises within their Ward within 2 working days of receiving such application, notice or relevant representation. This requirement is in addition to any requirement arising under the Hearings Regulations.
5. The Licensing Service may seek to mediate between the parties to an application with a view to securing: -
 - (a) the withdrawal of any relevant representation or notice,
or
 - (b) the agreement of the parties that a hearing is unnecessary.
6. If, in any case, the parties agree that a hearing is unnecessary, the Licensing representative, in consultation with the Chair, shall decide whether the Council consider that a hearing is unnecessary to determine the application and shall give notice of that decision to the parties forthwith.
7. In any case where it has been decided that a hearing is unnecessary, the Sub-Committee shall consider the application at an ordinary meeting. In reaching its decision, the Sub-Committee shall take into account the form of application and accompanying documents, any written relevant representations and notices that have not been withdrawn and any report or other documents that appear to be relevant.

Membership and Quorum for Hearings

8. Where an application relates to premises within a Ward, then a Ward Councillor shall not take part in the decision upon that application as a Member.
9. So far as practicable, hearings will be arranged so that the Sub-Committee determining the application does not include Members representing any Ward in which premises affected by the application are located

10. The quorum for any hearing of a Sub-Committee shall be three Members and the quorum for any hearing by the Licensing Committee shall be four Members.
11. Any Member arriving after the commencement of a hearing, or leaving during the course of a hearing, shall take no part, or no further part, in the conduct of that hearing or the decision on the application in question.

Councillors' Participation in Hearings

12. A Councillor, who is not a Member of the Sub-Committee determining the application in question, may participate in the hearing but only if the Councillor is an objector who has made relevant representations in accordance with the Hearings Regulations and the Act, or if the Councillor has been asked to attend by a party in order to act as a witness or a representative for that party.
13. A Councillor, who is a Member of the Sub-Committee determining the application in question, will have a prejudicial interest in that application if the he/she makes a relevant representation by way of objection to it and may well have a prejudicial interest if he/she has otherwise been involved in supporting or opposing the application. Any Member of a Sub-Committee who has a prejudicial interest for these or other reasons must not participate in the decision upon the application and must not be present at the hearing in any capacity or at all.
14. Any Member of a Sub-Committee who has made a relevant representation by way of objection to an application on behalf of his/her constituents and who cannot attend the hearing personally by reason of Rule 13, should arrange to be represented by an agent or a fellow Ward Councillor who is not a Member of the Sub-Committee.
15. A Councillor will have a personal interest in an application if it might reasonably be regarded as affecting that Councillor (or his/her spouse/partner, relatives, friends, employer or business) to a greater extent than other residents in the area. A Councillor with a personal interest shall not participate in decision-making on the application in question as a Member of the relevant Sub-Committee. This is in order to avoid any possible allegation of bias.

16. Whenever a Councillor, who is not a Member of the Sub-Committee, intends to participate in a hearing in accordance with Rule 12, the Councillor must consider whether he/she has a personal or a prejudicial interest before the hearing. A Councillor with a personal interest, who is not a Member of the Sub-Committee determining the application, may participate in a hearing in accordance with Rule 12 but must disclose such an interest first. A Councillor with a prejudicial interest, who is not a Member of the Sub-Committee determining the application, must not be present at the hearing in any capacity or at all. Members must be aware that their Code of Conduct applies to all Councillors at all times in whatever capacity they attend a hearing.
17. Where a Member of a Sub-Committee has had any form of personal or business involvement with a party to an application, which is to be determined by the Sub-Committee, or with any person connected to a party, then the Member must consider whether such involvement could amount to a personal or a prejudicial interest or whether such an interest could exist for any other reason. If there is any doubt on this matter, the Member must seek the advice of the Monitoring Officer or the legal representative.
18. A Councillor who has participated in a decision by the Council to make any application, or to support or assist an application made by another person, shall not participate in decision-making on the application in question as a Member of the relevant Sub-Committee.

Lobbying of Members and Expressions of Opinion by Members

19. If a Member of a Sub-Committee is approached by a party or a lobbyist for or against an application to be determined by that Sub-Committee, then the Member must: -
 - (a) explain that he/she cannot discuss the matter, and
 - (b) refer the lobbyist to another Councillor who is not a Member of the Sub-Committee or to the Licensing Service who can give further information on the process of dealing with the application, and
 - (c) keep an adequate written record of the approach, and

- (d) disclose the fact of the approach before the hearing in accordance with Rule 51 (c).
20. If a Member of a Sub-Committee receives any written representation either supporting or opposing an application to be determined by that Sub-Committee, then the Member shall pass the representation to the Licensing Service for appropriate action.
 21. A Member of a Sub-Committee must avoid expressing any personal opinion about the merits of an application to be determined by that Sub-Committee and must not take any action that would bring into question the Member's capacity to consider the application objectively.
 22. A Member of a Sub-Committee must not accept any gift, favour or free hospitality that could be seen as connected to any application to be determined by that Sub-Committee.
 23. Members of Sub-Committees are not to be influenced by party political factors or pressures when determining any application.

Non-Attendance at Hearings

24. Where a party has not notified the Council that he/she does not intend to attend or to be represented at a hearing, and that party fails to attend the hearing then the Sub-Committee may either: -
 - (a) adjourn the hearing to a specified date where it considers this to be necessary in the public interest, or
 - (b) hold the hearing in the party's absence.
25. Normally, a party who fails to attend a hearing in the circumstances described in Rule 24 above, will be allowed one further opportunity to attend the hearing adjourned to a specified date.
26. Where an adjournment is granted, the Licensing representative shall make every reasonable endeavour to contact the party who failed to attend by telephone or in person in order to warn them of the new date for the adjourned hearing and the likelihood that the application will be determined in that party's absence in the event of further failure to attend.

Calling Witnesses

27. Where a party wishes to call a witness to give evidence at a hearing that party must give written notice to the Licensing Service of this intention no later than ten working days before the date of the hearing stating: -
 - (a) the name of the witness, and
 - (b) a brief description of the point or points upon which the witness' evidence may assist the Sub-Committee in making its decision on the application
28. Where a party has given notice under Rule 27, the Licensing Service shall forthwith communicate this notice to the other party/parties, if possible by electronic means or by the most rapid practicable alternative means.
29. Where a party has given notice under Rule 27, the Sub-Committee shall consider at the commencement of the hearing whether it will permit the party to call the witness for the purpose(s) notified. Such permission shall not be unreasonably withheld.

Documentary Evidence

30. Where a party wishes to rely upon documentary evidence at a hearing that party must give written notice to the Licensing Service of this intention no later than ten working days before the date of the hearing. This notice shall be accompanied by six copies for the Council and sufficient additional copies of all the relevant documentary evidence for each other party made known to the notifying party. Compliance with this Rule is especially important in relation to documents that are not easy to photocopy because, for example, they are coloured or not A4 size.
31. Where a party has given notice under Rule 30, the Licensing Service shall forthwith communicate all the relevant documentary evidence to the other party/parties if possible by electronic means or by the most rapid practicable alternative means.
32. Where a party has complied fully with Rule 30, that party shall have the right to have the relevant documentary evidence admitted and, subject to the provisions of the Hearings Regulations, the Sub-Committee shall take such evidence into account in making its decision.

33. In any case where a party wishes to rely upon documentary evidence but has not fully complied with Rule 30, then at the commencement of the hearing the Sub-Committee shall follow this procedure: -
- (a) the Chair shall establish whether the other party/parties consent to the documentary evidence being admitted, and
 - (b) if all the other parties so consent, then the documentary evidence shall be treated as if Rule 32 applied to it, or
 - (c) if any party does not so consent, then the Sub-Committee shall decide whether to admit the documentary evidence nonetheless
 - (d) in making its decision under Rule 33(c), the Sub-Committee shall have regard to any reasons given for the late production of the documentary evidence, or other non-compliance with Rule 30.
 - (e) in making its decision under Rule 33(c), the Sub-Committee shall consider how far any other party may be prejudiced by the late production of the documentary evidence, or other non-compliance with Rule 30, and also the extent of the prejudice to the party seeking to rely upon the evidence if its admission is refused.
 - (f) in making its decision under Rule 33(c), the Sub-Committee shall consider whether it would be desirable in the public interest to adjourn the hearing for any period of time, or to another date, in order to allow any other party a reasonable opportunity to consider the documentary evidence.
 - (g) in making its decisions under Rules 33(c) and 33(f) above, the Sub-Committee shall consider any representations by the parties and the advice of its legal representative.
34. Where a party wishes to rely upon documentary evidence at a hearing but considers that any details of that evidence should be treated as confidential, for example the name or address of the signatory of a letter, then the party may exclude such confidential details from any documentary evidence sent to the Licensing Service under Rule 30. This Rule does not apply to any notice given or relevant representation made, since the originator must state his/her name and address in order for it to be valid.
35. In any case where confidential details are excluded under Rule 34, the Licensing Service must be informed that a request will be made by the party under Rule 42. If permission is refused under Rule 43, the whole or part of the relevant documentary evidence

may be excluded from consideration. If permission is granted to exclude any confidential details, this may affect the weight to be given to the rest of the related evidence under Rule 58.

36. Where a party wishes to rely upon a model, or any form of evidence that cannot be photocopied, at a hearing that party must give written notice to the Licensing Service of this intention no later than ten working days before the date of the hearing. The party seeking to rely upon such evidence shall indicate in the notice, so far as practicable, the nature of that evidence and the purpose(s) of producing it.
37. Where a party has given notice under Rule 36, the Licensing Service shall forthwith communicate all relevant information about the evidence to the other party/parties if possible by electronic means or the most rapid practicable alternative means.
38. Rules 30 to 33 shall be applied flexibly to evidence of the type described in Rule 36 with a presumption that such evidence will be admitted if it materially helps the Sub-Committee to understand relevant issues between the parties at the hearing.

Petitions

39. Petitions shall on each page state their purpose and contain a warning to potential signatories that they are liable to be made public and that a copy will be supplied to other parties to the application. Each person signing should print their name and address legibly. At the end a petition must state the name(s) and address(es) of the persons circulating the petition and the dates on which this took place.
40. A petition must comply with Rule 39 unless the Sub-Committee decide to waive compliance with any requirement(s) for a good reason. A petition shall also be treated as documentary evidence and Rules 30 to 33 shall apply.

Private Hearings and Confidential Evidence

41. In accordance with the Hearings Regulations, hearings shall take place in public unless a decision to the contrary is made under Rule 43 in any case.
42. Where a party or a witness consider that any giving of evidence, or part of any evidence, or part of a hearing, should be held in

private, then the party or their witness shall make such request to the Chair at the commencement of the hearing.

43. The Sub-Committee may decide to exclude members of the public from any part of a hearing and/or treat any evidence as confidential where the Sub-Committee consider that the public interest in preserving the confidentiality of any evidence outweighs the public interest in that part of the hearing taking place in public.
44. For the purposes of Rule 43, a party, a witness and any person assisting or representing a party, may be excluded from any part of a hearing or from hearing or seeing any particular evidence. Where the Sub-Committee decide to hold part of a hearing in private, a party and/or his/her representative shall not be excluded except for very special reasons.
45. Where the Sub-Committee decide to hold part of a hearing in private, the officers of the Licensing Service will not be excluded except for very special reasons. The Committee Clerk and legal representative shall not be excluded.
46. Before making any decision under Rules 43 or 45, the Sub-Committee shall consider the advice of its legal representative.
47. Where any part of a hearing takes place in private, the hearing will be adjourned immediately thereafter for a period of time sufficient to enable the Committee clerk to prepare a fair summary of the evidence and proceedings heard in private. This summary will exclude all details that the Sub-Committee, acting with the advice of its legal representative, consider should remain confidential. Upon the resumption of the hearing, the summary will be read out publicly in the presence of all the parties.
48. Rules 41 to 47 shall apply as nearly as may be practicable to documentary evidence where, with the consent of the Sub-Committee, confidential details may be disclosed to the Sub-Committee but excluded from disclosure to the public or persons mentioned in Rule 44.
49. Rules 41 to 47 shall apply, as nearly as may be practicable, where a witness wishes to disclose his/her name and/or address or other details only to the Sub-Committee and Council officers but not to the public or persons mentioned in Rule 44.

50. Whenever any evidence or information has been treated as confidential under Rules 41 to 49, the Sub-Committee shall consider whether to alter the weight given to that evidence in accordance with Rule 58.

Commencement of the Hearing

51. At the commencement of each hearing the Sub-Committee shall follow this procedure but may omit or abridge any step or Rule as appropriate -
- (a) The Chair will introduce him/herself and invite the Members and officers to introduce themselves
 - (b) The Chair will invite the parties to introduce themselves and their representatives (if any)
 - (c) The Chair will invite Members to disclose any contacts they may have had before the hearing with the parties or lobbyists for them.
 - (d) If any party fails to attend the hearing, the Sub-Committee shall decide whether to proceed with the hearing in the absence of that party or whether to adjourn the hearing to another date. The Sub-Committee shall have regard to Rules 24 and 25 and Regulations 12 and 20 of the Hearings Regulations in making such decisions.
 - (e) The Chair will explain the procedure to be followed by reference to these Rules.
 - (f) The Chair will suggest the order of the topic headings for discussion at the hearing and will then invite the comments of the parties. In the light of such comments the Sub-Committee will confirm the order of the topic headings or amend them.
 - (g) The Chair will ascertain whether there are any requests by any of the parties to call a witness and the Sub-Committee will then determine any such request under Rule 29.
 - (h) The Chair will ascertain whether there is likely to be a request from any of the parties to cross-examine a witness called by another party and, if so, the reasons given for seeking a cross-examination. The Sub-Committee will then determine whether to allow such cross-examination in the interests of establishing relevant facts.
 - (i) The Chair will ascertain whether there are any requests by any of the parties to produce documentary evidence, including models etc., and whether there has been full compliance with Rules 30 to 37. In the event of any non-compliance these Rules, the Sub-Committee shall decide whether to admit the evidence and/or adjourn the hearing under Rules 33 and 38.

- (j) The Chair will ascertain whether there are any requests by any of the parties to treat any evidence as confidential or to hear any of the evidence, or hold any part of the hearing, in private. If so, the Sub-Committee shall decide the request under Rules 43 to 49.
- (k) In any case where the Licensing Service has informed a party that there are particular points on which the Sub-Committee will need clarification, the Chair will then invite the party to provide such clarification.

Procedure and Evidence at Hearing

- 52. In accordance with Hearings Regulations, the hearing shall take the form of a discussion led by the Chair. With permission of the Chair the other Members of the Sub-Committee may ask questions of the parties, their representatives and witnesses and may lead the discussion on specific topics or points.
- 53. The hearing shall follow the order of the topic headings determined under Rule 51 (f) unless there is a good reason to depart from this agreed by the Sub-Committee.
- 54. The Chair, or Member leading the discussion, shall endeavour to ensure that each party has a reasonable opportunity to explain their case under each topic heading. The parties, their representatives and witnesses have a duty to make their evidence and comments succinct and relevant to the issues under discussion.
- 55. A party shall not be permitted to cross-examine another party or their witness unless this has been allowed under Rule 51 (h). If a party has concerns relating to the evidence or comments of another party or their witness, this should be explained to the Sub-Committee so that the Chair can question the other party/witness about these concerns before completing that topic heading.
- 56. Where permission has been given to a party to call a witness, that witness may give evidence in one or more stages when the discussion covers the appropriate topic heading(s). Normally, a witness will be invited by the Chair to make a statement. The witness will then be subject to cross-examination by the other party/parties if this has been allowed under Rule 51 (h). Then the Sub-Committee may question the witness. A party shall not re-examine his/her own witness except with the consent of the Chair to clarify a significant point in earlier evidence.

57. At the end of each topic heading the Chair shall invite the Licensing Service or legal representative to make any comments that they may consider necessary. With the consent of the Chair, these officers may question parties or witnesses directly or put their questions through the Chair.
58. Strict legal rules of evidence shall not apply. However, in considering what weight to place on the evidence or comments of any party or witness, the Sub-Committee shall have regard to the extent to which information was:
 - (a) within a witness' direct knowledge, and
 - (b) clearly and specifically related to the points at issue in the hearing, and
 - (c) tested by questioning.
59. The Chair shall be responsible for the orderly conduct of the hearing. The Chair may require any person to be silent and may regulate the order in which persons speak at the hearing. The Chair will endeavour to prevent remarks which are repetitious or irrelevant or which amount to unsubstantiated offensive allegations against any person, present or not.
60. The Chair on his/her own motion may indicate the decision of the Sub-Committee on any procedural matter within the scope of these Rules notwithstanding that the decision is stated in these Rules to be that of the Sub-Committee. This is subject to the right of any Member, who makes an immediate request, to have the matter put to the vote of the Sub-Committee as a whole. Rule 66 will apply to such a vote.
61. In accordance with the Hearings Regulations, each party has the right to make a closing address to the Sub-Committee in order to summarise his/her case at the end of the hearing. Unless the applicant consents to a different order, the applicant shall have the right to make the final address.
62. Each party must be allowed an equal maximum period of time to make a closing address. Normally, the Chair will invite each party to state how much time that party will require. However, the Sub-Committee may fix a greater or lesser maximum time for each closing address provided that this is reasonable in relation to the weight and complexity of the issues at the hearing.

Time Limit for Hearings

63. At 9.30 p.m. the Chair must ask the Sub-Committee to agree –

- (a) to continue the hearing in hand and, if necessary, to suspend these Rules so as to allow it to continue for a reasonable time beyond 10.00 p.m. when this is necessary to complete the hearing and advisable in the interests of fairness, and/or
- (b) to adjourn the hearing and/or any other unfinished business on the agenda until a date to be fixed.
64. Hearings shall not normally continue later than 10.00 p.m. and no new hearing shall be commenced after 10.00 p.m.

Decision Making

65. At the end of a hearing the Sub-Committee may confer publicly and announce its decision on the application(s) immediately.
66. Alternatively, the Sub-Committee may defer reaching its decision until a later time or date, in so far as this accords with the Hearings Regulations.
67. In any case, and whether or not Rule 66 applies, the Sub-Committee may retire with the Committee clerk and legal representative to another room to deliberate in private.
68. The Sub-Committee, if making a decision at that time, must reach their decision by a majority vote. The Licensing Committee, if making a decision at that time, must reach their decision by a majority vote but, in the event of an equality of votes, the Chair shall have a second, or casting, vote.
69. The decision(s) will then be summarised in writing and the Sub-Committee will return to the public meeting so that the Committee clerk can read out the decision(s) in the presence of all the parties and their representatives.
70. If the Sub-Committee require any clarification of matters of fact before reaching their decision(s), the Sub-Committee shall return to the public meeting and put questions to the parties, their witnesses or the Licensing representative in the presence of all the parties and their representatives.

71. If the legal representative gives legal advice on any point(s) material to the Sub-Committee's decision(s), this advice will be summarised and read out by the legal representative in public before the Committee Clerk reads out the decision(s).

Waivers and Irregularities

72. The Chair may agree to waive any of these Rules, including any time limit, in the case of any individual application where he/she considers that there is good reason to do so. Excepted from this power to waive are Rules 8 to 23 (inclusive). Any permanent variation of these Rules must be decided by the Licensing Committee.
73. Any irregularity arising from any failure to comply with any provision of these Rules before the Sub-Committee has made a determination shall not of itself render the proceedings void.
74. In any case of such an irregularity the Sub-Committee shall, if Members consider that any person may have been prejudiced as a result of the irregularity, take such steps as Members think fit to cure the irregularity before reaching a determination of the application(s). In any such case the Sub-Committee shall consult the legal representative before deciding upon any steps to cure the irregularity.
75. In any case where it appears after the Sub-Committee's determination that the decision has been vitiated by incorrect information or any procedural or legal error, the Legal Representative shall advise the Chair of this and of the steps necessary to remedy the problem. With the consent of the Chair, the Sub-Committee may reconvene to take the steps advised and/or to amend its decision. With the consent of the Chair in an appropriate case, the Members of the Sub-Committee may signify their consent to any steps advised and/or any amended decision without reconvening in person. When the legal representative so advises, the parties affected shall be invited to a reconvened hearing or, where appropriate, to signify their consent to any steps proposed without attending in person.

Cases Remitted by the Magistrates on Appeal

76. On an appeal to the Magistrates Court, the Court may remit the case to the Council for it to determine in accordance with the Direction of the Court. The Chair of the Licensing Committee on legal advice may wish the Council to contest that Direction by

further legal proceedings. If not, the Chair will receive advice from the Head of Legal Services on how to comply with the Direction of the Court and will be requested to agree the appropriate procedure. So far as possible, these Rules will apply to any further hearing with such modifications as are advised to secure compliance with the Direction of the Court.