

Licensing Committee

on

6 December 2005Report Title: **Amendment and Adoption of the Local Licensing Procedure Rules**Forward Plan reference number (if applicable): **N/A**Report of: **Head of Legal Services**Wards(s) affected: **All**Report for: **Non-Key Decisions****1. Purpose**

- 1.1 To seek Members views on the operation of the Local Licensing Procedure Rules and to recommend certain amendments prior to the adoption of these Rules as part of the Council's Constitution

2. Recommendations

- 2.1 That Members review the operation of the Haringey Local Licensing Procedure Rules in the light of practical experience at Licensing Sub-Committee hearings.
- 2.2 That Members approve the amendments to the Local Rules, as set out in Appendix 1 to this report.
- 2.3 That Members request the General Purposes Committee to recommend the Local Rules, as amended above, to full Council for adoption as part of the Council's Constitution.
- 2.4 That, Members agree to use the Summary of Procedure, as set out in Appendix 2 to this report, as a guide at Licensing Sub-Committee hearings.
- 2.5 That Members note that Council Procedure Rule 37 does not apply to Licensing Sub-Committee hearings and agree that the "stand alone" item on Deputations/Petitions should no longer appear on Licensing Sub-Committee agendas.

Report Authorised by:

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3 Executive Summary

- 3.1 The report seeks the Committee's views on these local Rules which have been applied in many hearings over the past 4 months.
- 3.2 Officers are recommending changes to clarify (i) that the Members' Code of Conduct applies in whatever capacity a Councillor may attend a hearing, (ii) that the full procedures can be abridged in the majority of cases where it is unnecessary to consider every Rule (iii) the role of the Chair in making procedural decisions, (iv) the power of a Sub-Committee to amend its decisions in order to correct any fault or legal error, and (v) the procedure if a case is remitted to the Council by the Magistrates Court on appeal.
- 3.3 Once approved by the Licensing Committee, the Rules would be recommended via General Purposes Committee to full Council for adoption as part of the Council's Constitution.
- 3.4 The Licensing Committee is also being asked: (a) to agree the use of a standard summary of the Rules to assist at hearings, and (b) to note that Council Procedure Rules 37 on Deputations and Petitions does not apply to Licensing hearings.

4 Reasons for any change in policy or for new policy development (if applicable)

- 4.1 This report follows four months practical experience of operating the Rules to regulate hearings under the Licensing Act 2003

5 Local Government (Access to Information) Act 1985

- 5.1 The following background papers were used in the preparation of this report:

the Legal Service file on this matter.

6 Background

- 6.1 The Committee's five Sub-Committee's have been holding hearings under the Licensing Act 2003 since 10 May 2005 but on an approximate weekly basis only since late August. This report is intended to provide the opportunity for Licensing Members to review the operation of the Haringey Local Licensing Procedure Rules after about 4 months practical experience. These Rules are attached as Appendix 1 to this report.

6.2 The matters which affect the substance of Haringey's Local Rules are: (i) the traditional common law Rules of Natural Justice, (ii) the Human Rights Act 1998, (iii) the Licensing Act 2003, and (iv) the Government's "Hearings Regulations" S.I. 2005/44. The Local Rules must be consistent with all the matters (i), (ii), (iii) and (iv) above. The "Hearings Regulations" govern procedures before the actual hearing and prescribe many aspects of the hearing procedure itself. There is still some scope for local choice about the details.

7 Review of Procedures and the "Summary of Procedure"

7.1 The most novel feature of the new Rules, as compared to earlier and more formal Licensing Procedure Rules, is the requirement that "a hearing shall take the form of a discussion led by the authority" (in practice this has meant led by the Chair). This is a requirement of the "Hearings Regulations" and so not a provision which Members can ignore. However, the requirement could be put into practice in a number of ways.

7.2 There have been demonstrable advantages from allowing a general "discussion" between the parties with the Chair acting as arbiter. An informal part of the proceedings, with easy exchanges between the opposing sides, has encouraged all concerned to compromise and to achieve workable solutions acceptable to everyone.

7.3 On the other hand, there are advantages in keeping the more formal and traditional elements of the procedure but within a flexible framework. These formal elements are an opening statement, the chance for each party to ask questions, the requirement on each party to be subject to questions and the right to a closing address. If the parties are given the right to these formal steps in the procedure, then there will be less chance of complaints or appeals on the basis that a party was not given a fair hearing.

7.4 Both these formal elements and the general "discussion" are provided for within the current Local Rules. Therefore, it is recommended that no fundamental changes are needed.

7.5 Since the full version of the Rules is very long (12 pages), it is recommended that the Licensing Sub-Committees be guided on a regular basis by a shorter Summary of Procedure. This is attached as Appendix 2 to this report. It sets out the procedures that are relevant to many, or most, hearings and it has been used successfully at several hearings already.

8 Recommended Amendments to the Local Rules

8.1 Several amendments are now recommended to the Local Rules. These amendments do not affect the main principles of the procedure. They do clarify a few important points and make provision for certain matters not included in the Rules originally. The suggested amendments are set out in Appendix 1. The words recommended for deletion are shown struck through. The words recommended for addition or insertion are shown in italics and underlined.

8.2 In Rule 16 some additional text is proposed to cover the Code of Conduct requirements that apply to any Councillor who wishes to attend a hearing as an objector, a witness or a representative for a party. For the avoidance of any possible doubt, Members will be reminded that personal interests must be disclosed, that

prejudicial interests prevent the Member from attending at all and that the Code of Conduct applies to all Councillors attending in any capacity.

- 8.3 The small addition to Rule 17 makes clear the scope of the duty of Sub-Committee Members to consider and seek advice upon personal or prejudicial interests.
- 8.4 The extra text recommended in Rule 51 allows the Chair to omit express reference to any procedural steps or Rules that are not relevant to that particular hearing. For example, the special Rules on confidential evidence are rarely likely to be needed. The point of the change is to ensure that the Council is not challenged simply because some irrelevant or unimportant aspect of the procedure was not addressed.
- 8.5 A new Rule 60 would legitimise a feature of the procedure that generally happens in practice. It would expressly authorise the Chair to make procedural rulings without having to formally consult his colleagues on the Sub-Committee or put each point to the vote on every occasion. There are many Rules which are stated to be the decision of “the Sub-Committee”. In these cases each Member has the right, if they so wish, to call for an immediate vote on a procedural point but unless questioned in this way the decision of the Chair stands.
- 8.6 Two new rules are proposed at the end. Rule 73 would cover the situation that arose at a hearing in October when inaccurate information was given to the Sub-Committee by the applicants for conversion and extended hours about their existing “grand-father rights”. The Sub-Committee, without any fault by officers or Members, made a decision that was beyond its jurisdiction. On legal advice, and with the consent of the parties, this decision was amended. The introduction of a new Rule to cover this situation would tend to avoid unnecessary appeals or challenges and thus protect the Council’s interests.
- 8.7 A new Rule 74 would provide expressly for cases remitted by the Magistrates Court to the Council on appeal. In most cases where one party appeals the Council’s decision, the Magistrates Court will hear the whole case afresh and decide to uphold or reject the appeal. However there may be cases where the appeal is essentially on a procedural point, for example, whether some evidence should have been admitted at the original hearing. In such circumstances the Magistrates may remit the case to the Council with a Direction to deal with it in a specific way, for example, to re-hear the matter but allowing in evidence a document previously excluded. The proposed new Rule provides for the Chair of the Licensing Committee to agree, on legal advice, the steps that the Council will take to comply with the Direction.

9 The Constitution

- 9.1 If Members of the Licensing Committee are satisfied that the Local Rules, including the amendments suggested in this report, are now fit for their purpose, they could recommend to full Council through the General Purposes Committee that the Local Rules be formally adopted as part of the Councils’ Constitution. This would be appropriate because other procedural rules governing the work of Committees, such as the “Protocol for Hearing Representations at Planning Applications Sub-Committee” (Part C6), have already been incorporated into the Constitution.

9.2 On the other hand, if Members considered that more practical experience was needed and that there might be further changes, that would be an argument for delaying incorporation into the Constitution. Changes to the Constitution necessarily involve a longer process than a simple amendment to non-constitutional Rules. The Local Rules remain perfectly valid even if not adopted as part of the Constitution.

10 Deputations

10.1 At the meeting of the Licensing Committee on 8 February 2005, Members resolved to exclude the Council's Procedure Rules (Part E.8 of the Constitution) from applying to hearings by Licensing Sub-Committees (Minute LC56). The consequence is that CPR 37 on Deputations and Petitions at Committees does not apply.

10.2 It follows that the "stand alone" reference to "Deputations/Petitions" on Licensing Sub-Committee agendas should not appear.

10.3 There is provision within the Local Procedure Rules for parties to a hearing to submit petitions subject to the Rules on Documentary Evidence. There is no express provision for Deputations but registered objectors, who have submitted relevant representations in time, may constitute themselves as a deputation or seek to call signatories to a deputation as witnesses subject to the existing Local Rules.

11 Recommendations

11.1 That Members review the operation of the Haringey Local Licensing Procedure Rules in the light of practical experience at Licensing Sub-Committee hearings.

11.2 That Members approve the amendments to the Local Rules, as set out in Appendix 1 to this report.

11.3 That Members request the General Purposes Committee to recommend the Local Rules, as amended above, to full Council for adoption as part of the Council's Constitution.

11.4 That, Members agree to use the Summary of Procedure, as set out in Appendix 2 to this report, as a guide at Licensing Sub-Committee hearings.

11.5 That Members note that Council Procedure Rule 37 does not apply to Licensing Sub-Committee hearings and agree that the "stand alone" item on Deputations/Petitions should no longer appear on Licensing Sub-Committee agendas.

12 Comments of the Director of Finance

12.1 There are no specific financial implications.

13 Legal Implications

13.1 The Haringey Local Licensing Procedure Rules are made under section 9 (3) of the Licensing Act 2003 and Reg. 21 of "The Licensing Act 2003 (Hearings) Regulations 2005" (S.I. 2005/44).

14. Equalities Implications

14.1 There are no specific equalities implications

15. Use of Appendices / Tables / Photographs

- 15.1 Appendix 1 to this report is the text of the Haringey Local Licensing Procedure Rules showing the amendments proposed

- 15.2 Appendix 2 to this report is the “Summary of Procedure” proposed for use at Licensing Sub-Committee hearings.