

COUNCIL BUSINESS MANAGEMENT (MISCELLANEOUS APPEALS) SUB COMMITTEE

PROCEDURAL RULES FOR THE HEARING OF LICENSED AND CASUAL

STALLHOLDER APPEALS 2015

1. PURPOSE

- 1.1 These Procedural Rules exist to aid proper consideration and determination by the Council Business Management (Miscellaneous Appeals) Sub-Committee (“the Committee”) of all Licensed and Casual Stallholder appeals under the Rules and Regulations (2006) for the Operation of the Retail Markets.
- 1.2 The Rules and Regulations (2006) give the Committee the power to regulate its own procedure.
- 1.3 These Procedural Rules explain how appeals are to be heard, and give details of the role of the participants at the Hearing.
- 1.4 The Committee may depart from these Procedural Rules, giving full reasons for doing so, if the interests of justice require it.
- 1.5 These Procedural Rules should be read alongside the Council’s Constitution, Standing Orders, and the Rules and Regulations (2006) for the Operation of the Retail Markets.

2. DEFINITIONS

In these Procedural Rules the following terms have the meanings and interpretations hereby assigned:-

- 2.1 **“Appeal”** means an application to the Committee by a Licensed or Casual stallholder who is entitled to appeal under the Regulations against a decision of the Head of Operations, Market, Birmingham City Council.

- 2.2 **“Applicant”** means the stallholder who has submitted an appeal for consideration by the Committee.
- 2.3 **“Applicant’s Friend”** means a person attending a Hearing to assist an unrepresented Applicant in presenting his or her appeal. An Applicant’s Friend must not be a party to the Appeal, or a witness in the Appeal, or the provider of any evidence to the Committee for the Appeal. An Applicant’s Friend shall not be permitted to speak on the Applicant’s behalf except where specifically permitted to do so by the Committee having heard submissions from the Parties and taken legal advice from the Committee Lawyer.
- 2.4 **“Applicant’s Representative”** means a person attending a Hearing to represent an Applicant including a solicitor or barrister.
- 2.5 **“Authorised Officer”** means an officer in the Department who is authorised in writing by the Head of Operations, Markets – Birmingham City Council to exercise a particular function with respect to the Retail Markets.
- 2.6 **“Casual Stallholder”** means a trader attending the Retail Markets who has not been granted a Licence.
- 2.7 **“Chairperson”** means the Councillor who is the Chairperson of the Committee for the Hearing.
- 2.8 **“Committee” or “Appeals Committee”** means the Council Business Management (Miscellaneous Sub)-Committee to which the function of dealing with appeals under the Regulations is delegated.
- 2.9 **“Committee Lawyer” or “Clerk to the Council Business Management (Miscellaneous Appeals) Sub Committee”** means the Council’s solicitor or barrister (including an external solicitor or barrister instructed by the Council’s Chief Legal Officer) who is present at the Hearing to advise the Chairperson and the Councillors on law and procedure. The Committee Lawyer may upon

invitation from the Chairperson observe but may not take part in the Committee's discussions and determination of the Appeal.

- 2.10 “**Committee Manager**” means the Council's officer who is present at a Hearing to take minutes.
- 2.11 “**Committee Report**” means an Authorised Officer's written report to the Committee concerning the Appeal. A copy of the Committee Report shall be made available to the Applicant or any Interested Party in advance of the Hearing.
- 2.12 “**Council**” means Birmingham City Council
- 2.13 “**Councillor**” means a Councillor who is a member of the Committee that is considering an Appeal.
- 2.14 ‘**Department**’ means the Council's relevant Market which is the subject of the appeal.
- 2.15 “**Employee**” means a person working for a Licensed or Casual Stallholder.
- 2.16 ‘**Head of Operations, Markets**’ means the head of Operations, Markets – Birmingham City Council or in that person's absence the holder of the post of Markets Manager, Markets.
- 2.17 “**Hearing**” means a meeting of the Committee at which an Appeal is considered.
- 2.18 “**Licence**” means a licence granted by the Department to occupy a stall or stalls in the relevant Market which is the subject of the appeal.
- 2.19 ‘**Licensed Stallholder**’ means a trader who has been granted a Licence by the Department to occupy and trade from a stall or stalls in the relevant Market which is the subject of the appeal.
- 2.20 “**Interested Party**” means a person who is not a party to the Appeal who is present at a Hearing holding a relevant interest in the Appeal as determined

by the Committee. An Interested Party may be legally represented, or may be helped by a friend in the same way as an Applicant's Friend.

- 2.21 **"Parties"** means the Applicant, the Council or an Interested Party and representatives instructed by them.
- 2.22 **"Presenting Officer"** means the person instructed by the Council to be at the Hearing in order to present the Council's case. The Presenting Officer may be an Authorised Officer or a legal representative instructed by the Council.
- 2.23 **"Procedural Rules"** means these procedural rules.
- 2.24 **'Regulations'** means the Rules and Regulations (2006) for the operation of the Retail Markets.
- 2.25 **"Retail Markets"** means the Open Market, St. Martins Indoor Market.
- 2.26 **"Senior Officer"** means the Markets manager or Principal Market Officer(s) in the Department.
- 2.27 **"Serious Misconduct"** Includes but is not limited to any of the following:-
- Sexist, racist, foul or abusive language;
 - Acts of dishonesty;
 - Acts of indecency;
 - Any act causing or likely to cause death or personal injury to a person.

3. **GUIDING PRINCIPLES**

- 3.1 An Appeal is not courtroom litigation and should operate so far as practicable as an informal but fair process guided by the Chairperson with advice from the Committee Lawyer.
- 3.2 The Committee will at all times abide by its duty to act fairly and without bias.
- 3.3 The duty to act fairly incorporates basic legal standards of fairness. Amongst other common sense principles of fairness, the duty includes : -

- 3.3.1 Giving the Parties a chance to provide relevant evidence to the Committee; a chance to respond properly to the other Parties' arguments; and a chance to make submissions before the Committee makes a decision;
 - 3.3.2 Holding a hearing in public so far as is practicable under the law;
 - 3.3.3 Avoiding the appearance and existence of bias in favour or against one of the Parties;
 - 3.3.4 Assisting an unrepresented Party so far as practicable to give as good an account of himself commensurate with the duty to avoid the appearance of bias.
- 3.4 It is also fundamental that there is an orderly presentation of submissions at a Hearing so that the relevant issues are properly understood, evidence is tested, and that oral statements made at the Hearing are accurately recorded.

4. **THE APPEAL- Preliminary Matters**

- 4.1 Upon receipt of the Appeal the Committee Manager will write to the Parties to notify them of a timetable for both the Appeal Hearing itself and for providing all evidence for consideration by the Committee at the Hearing.
- 4.2 Upon receipt of that material the Committee Manager will by send out an Agenda for the Appeal Hearing, including all the evidence the parties wish to rely on.
- 4.3 The Committee Manager will determine by correspondence any application for amendment of the timetables save where there is a dispute requiring the input of the Committee in which case the Committee Manager may invite the Parties to make written submissions upon which the Committee can reach a decision on the papers.
- 4.4 Exceptionally, the Committee in consultation with the Committee Manager may list a pre-hearing review at which the Committee will determine any

preliminary matters. The Clerk to the Committee will be responsible for issuing any directions pursuant to the pre-hearing review.

- 4.5 Any material submitted by the Parties contrary to the timetable supplied by the Committee Manager may not be used in the Appeal without the consent of the Committee. In those circumstances, the Consent of the other Party must be obtained before Committee will consider your request.

THE APPEAL - The Hearing

- 4.6 The Appeal is by way of re-hearing, entitling the Committee to ask and answer the questions: 'Would we have found the allegations proved and if so what sanction would we have imposed?'
- 4.7 Any determination made by the Committee shall be made on the balance of probabilities.
- 4.8 There is no limit on the type of evidence that the Committee may accept from the Parties, including hearsay evidence. The weight to be accorded to any evidence is a matter for the Committee.
- 4.9 Prior to the Hearing commencing the Clerk to the Committee shall advise the parties of the procedure that the Committee proposes to follow at the Hearing.
- 4.10 The Hearing shall take place in public save where The Committee determine to exclude the public from all or part of the Hearing where it considers it to be in the public interest to do so and in accordance with the law including the Local Government (Access to Information) Act 1985, as amended. Public includes a party and any person assisting or representing a party.
- 4.11 The Committee may require any person attending the Hearing who, in their opinion, is behaving in a disruptive manner to leave the Hearing and may:
- (a) refuse to permit him/her to return; or

- (b) permit him/her to return only on such reasonable conditions as the Committee may specify;
- (c) in the event that a person is required to leave a Hearing that person may, before the end of the Hearing, submit to the Committee, in writing, any information which they would have given orally.

4.12 The Committee will determine whether the Appeal has properly been applied for in accordance with the Regulations.

4.13 The Committee will then consider any other preliminary matter before proceeding to the substantive appeal.

4.14 The Hearing will ordinarily be conducted by submissions rather than by hearing oral evidence.

4.15 As the hearings should be informal, but in accordance with rules of natural justice, cross-examination shall not be permitted unless the Committee considers it is required to enable it to consider the appeal. Any application to examine a witness in chief or to cross examine a witness shall be supplied to the Committee Manager in accordance with the timetable he provides under Procedural Rule 4.

5. **PRESENTATION OF SUBMISSIONS**

5.1 In the event that the Committee has given notice to a party requiring clarification on a point(s) then that party shall respond to the points raised by the Committee.

5.2 The Committee will allow the parties a reasonable time in which to present their cases, having regard to the evidence submitted.

5.3 Submissions shall be made in the following order unless the Chairperson directs otherwise:-

5.3.1 The author of the committee report orally presents it and will in particular draw the Committee's attention to:-

- (i) the options available;
- (ii) the considerations that are relevant in reaching a decision;
- (iii) any updated facts that have come to light since the Committee Report has been submitted;
- (iv) any relevant documentation supplied to the Committee in advance by the Applicant;
- (v) any action that the Applicant might take which would cause the representation to be withdrawn.

5.3.2 In the event that the Council instructs a separate Authorised Officer and Presenting Officer to attend the Hearing, then the Authorised Officer will present the Committee Report.

5.3.3 The Presenting Officer will then orally present the Council's case by way of submissions referring to any witness statements or evidence in chief.

5.3.4 The Applicant will then orally present their submissions referring to any witness statements or evidence in chief.

5.3.5 Any Interested Party will then orally present their submissions.

5.3.6 The Chairperson may allow any Party to reply.

6. **QUESTIONING OF SUBMISSIONS**

6.1 The Chairperson will regulate the order in which questions are asked by Councillors.

6.2 The Chairperson and Councillors may question any Party following the completion of their submissions.

6.3 If the Committee has allowed the oral examination of witnesses to take place, the Chairperson will regulate that questioning.

6.4 The Chairperson shall direct that questions that are not relevant to the appeal are neither put nor answered.

7. **DOCUMENTATION**

7.1 No party shall present new documentation to the Committee at the Hearing other than with the consent of the Committee. This does not preclude the Presenting Officer from correcting errors, providing updated information or an extract from a local map showing the Applicant's Premises.

7.2 If any party is granted permission to present supplementary material at the Hearing 10 copies must be provided at their own expense at the start of their submissions.

8. **INTERVENTION**

The Chairperson shall permit the following interventions at any point in the Hearing: -

8.1 The Committee Lawyer to advise the Committee on issues of law, procedure and relevant considerations on decision making. If necessary, the Chairperson may require all those present apart from Councillors, the Committee Lawyer and the Committee Manager to leave the Hearing so that advice can be given.

8.2 The Committee Manager to request that statements made are repeated for reasons of clarity so that they can be properly recorded.

9. **FAILURE OF PARTIES TO ATTEND HEARING**

- 9.1 If a Party has informed the Committee Manager that he does not intend to attend or be represented at a Hearing, the Hearing may proceed in the Party's absence.
- 9.2 If a Party has not given any indication and fails to attend or be represented at the Hearing then the Committee may:
- 9.2.1 where it considers it be necessary in the public interest, adjourn the Hearing to a specified date; or
- 9.2.2 hold the Hearing in the Party's absence.
- 9.3 Where the Council holds a Hearing in the absence of a party, it shall consider at the Hearing the application, representations or notice provided by that Party.

10. **CLOSING SUBMISSIONS**

The Chairperson shall allow first the Applicant an opportunity to make an oral closing submission and secondly, invite any Interested Party to do so and then finally permit the Presenting Officer to close the Council's case.

11. **DECISION**

- 11.1 Before considering any decision the Chairperson may, if he considers it necessary, require all those present apart from the Councillors, the Committee Lawyer and the Committee Manager, to leave the Hearing so that the decision may be considered, in private, and to consider any legal issues.
- 11.2 Neither the Committee Lawyer nor the Committee Manager will take part in the Committee's deliberations, but shall observe and advise only if asked to do so by the Committee.
- 11.3 The Committee is bound by the Regulations only to reach one of the following conclusions:

- 11.3.1 Allow the Appeal;
 - 11.3.2 Suspend the Applicant preventing him/her from trading from the Retail Markets for a period not exceeding twelve months; or
 - 11.3.3 Terminate the Applicant's Licence.
- 11.4 The Committee will give a reasoned decision in writing. At the discretion of the Committee a decision and the reasons for the decision may be reserved, or the decision may be given to the Parties orally and the reasons reserved.
- 11.5 The Committee Lawyer shall notify the Parties of the decision of the Committee in writing as soon as practicable after the Committee reaches its decision.