



COUNCIL

Notice of a Meeting, to be held in the Council Chamber - Ashford Borough Council on Thursday, 16th July, 2020 at 5.00 pm.

Page Nos..

Background Papers to Agenda Item 17

1 - 12

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REVISED REPORT SEEKING DECISION ON AN URGENT MATTER

PLANNING DURING THE CORONAVIRUS CRISIS: ADDITIONAL DELEGATIONS to the Strategic Development and Delivery Manager and the Development Management Manager, and to the Head of Planning and Development

Report to: Chief Executive

Copies for formal Consultation to: Chairman of the Planning Committee; Corporate Director of Law and Governance and Monitoring Officer; Director of Finance and Economy and Section 151 Officer.

Copies for Information to: The Leader of the Council; Portfolio-Holder for Planning and Development; Vice-Chairman of the Planning Committee and Deputy Portfolio-Holder for Planning and Development; Head of Planning and Development; Spatial Planning Manager; Development Management Manager; Team Leader – Strategic Applications; Senior Planning and Development Solicitor; Member Services Liaison Manager; Member Services Manager (Operational).

Report Author: Principal Solicitor - Strategic Development and Deputy Monitoring Officer, Jeremy Baker (tel.: ext. 574 or email jeremy.baker@ashford.gov.uk).

INTRODUCTION

H.M. Government’s Chief Planner’s last “Planning Update Letter”, dated March 2020, was issued to local planning authorities on 23 March. Under the heading, “COVID-19 Advice”, the Chief Planner wrote:-

“... It is important that authorities continue to provide the best service possible in these stretching times and **prioritise decision-making to ensure the planning system continues to function**, especially where this will support the local economy.

“We ask you to take an innovative approach, using all options available to you to continue your service. We recognise that face-to-face events and meetings may have to be cancelled but we encourage you to explore every opportunity to use technology to ensure that discussions and consultations can go ahead. **We also encourage you to consider delegating committee decisions where appropriate.** ...

“**We encourage you to be pragmatic** and continue, as much as possible, to work proactively with applicants and others...” [emboldening added]

IMPLEMENTING ADDITIONAL DELEGATIONS IN ASHFORD BOROUGH

Following the Chief Planner's letter, a conference call was held between Planning and Legal managers on 24 March, to discuss the introduction of additional delegations to planning officers. I then prepared a paper, which formed the basis of a lengthy conference call (circa 100 minutes) on 30 March between Planning and Legal managers, the Chief Executive, the Leader of the Council, the Chairman of the Planning Committee and the Portfolio-Holder for Planning and Development.

The first conference call identified for possible delegation to Officers, during the Coronavirus crisis, decisions on six matters which are currently decided by the Planning Committee. During the second conference call, with the three Members mentioned above, four (out of the six) were agreed to go forward (with minor clarifications, which I have incorporated below).

On 7 April, I circulated the original version of this report, recommending that new delegations be granted in respect of decisions on those four matters. Responses from Members identified concerns regarding delegating to Officers decisions on one of those four matters, and the Chief Executive then indicated that this would not, therefore, proceed at this time. Accordingly, my 7 April report is now withdrawn, and the following three matters are now recommended to go forward:-

1. **Reserved Matters Applications for approval of Appearance, Layout and Scale.** (Reserved Matters Applications for approval of Access and Landscaping are already delegated.) At present, a full report on Appearance, Layout and Scale applications has to be written by Officers and circulated to Committee Members, to ascertain whether at least 6 of them wish the application to be reported to Committee (which has virtually never happened). Decisions on these applications would be **delegated to the Strategic Development and Delivery Manager and the Development Management Manager**, in the same way that applications for approval of Access and Landscaping are currently delegated.
2. **Applications to remove or vary a Planning Condition on a previous Permission** (known as **Section 73 applications**). Section 73 applications for development already approved by the Committee were previously delegated to Officers, but this delegation was deleted on a general reorganisation of the delegations, and not reinstated thereafter. Decisions on these applications would be **delegated to the Strategic Development and Delivery Manager and the Development Management Manager**, in the same way that applications for approval of Access and Landscaping are currently delegated.
3. [Not used]
4. **Confirming Tree Preservation Orders following objection(s) being received** to them when first made by Officers. This procedure was introduced

in order to meet human rights and fairness requirements, whereby it is considered inappropriate for Officers who make an Order to then confirm it after formal objection has been made. It is proposed that confirmation of Tree Preservation Orders after objection(s) would be **delegated to the Head of Planning and Development to determine, after consultation with the Ward Member**. This would be on the proviso that the Head of Planning and Development would not have any involvement in the original consideration and making of Orders by the Strategic Development and Delivery Manager or the Development Management Manager; if for any reason, the Head of Planning and Development had any involvement, confirmation would continue to be a Committee decision.

The above are referred to in the remainder of this **revised** report as “**the Three Matters**”.

Delegating decisions on the **Three** Matters to Officers as above would ease decision-making delays, which will otherwise result from the recent cancellation of Planning Committee meetings, and allow future “virtual meetings” of the Planning Committee to focus their time and resources on the most strategic and important applications.

In all **3** cases, the following will remain:-

(a) The existing power for the Strategic Development and Delivery Manager or the Development Management Manager to report to Committee any decision that they consider to be **sensitive** such that it should be decided by the Committee (doubtless, they would normally consult the Head of Planning and Development before exercising this power);

and

(b) The existing power for the **Portfolio-Holder for Planning and Development** to refer applications to the Committee, on the grounds that he/she considers that the application should be considered by the Committee. (It is important that the Portfolio-Holder does not express firm views on applications in advance of any Committee meeting, to avoid any perception of predetermination.)

All Full, Outline and Hybrid planning applications for major development, falling in the existing categories where Planning Committee decisions are required, would continue to be reported to the Committee as now.

COMMENCEMENT, DURATION AND REVIEW OF ADDITIONAL DELEGATIONS

Following further consideration of the backlog of current applications, and in order to have the maximum effect on that backlog, it is now proposed that the **three** additional delegations will come into force **immediately** for all **pending** applications (**whenever received**), and all Tree Preservation Orders (**whenever made**), on the date of a decision by the Chief Executive on this revised report.

[This section redacted to prevent disclosure of confidential legal and business advice, protected from publication by legal professional privilege and confidentiality.]

It is very difficult to know the length of time the Coronavirus crisis will last. The Leader of the Council, the Chairman of the Planning Committee and the Portfolio-Holder for Planning and Development were content, during the second conference call, for the additional delegations to be **introduced for a short-term period of six months**.

This is consistent with the advice of H.M. Government's Deputy Chief Medical Officer on 29 March, to the effect that it could be six months before life returns to normal, with a variety of extraordinary measures lasting for potentially that period of time.

During that six-month period, there will be a review of the operation of the additional delegations, in order for a decision to be made as to whether they should be extended, in either the same or a modified form, or not.

The three Members on the second conference call recommended that the Chief Executive should proceed now to take a delegated decision on this basis.

CONSTITUTIONAL AND PROCEDURAL MATTERS

In terms of the Council's Constitution, the **Three** Matters are all Non-Executive functions, and any decision to delegate to Officers decision-making on the **Three** Matters is a Non-Executive question or matter within the powers of the Council.

The Chief Executive's delegation to determine Urgent Non-Executive questions or matters within the powers of the Council is in Part 3 of the Constitution, Appendix 5, para. 4.10, and (so far as relevant to this report) runs as follows:-

“Civil Emergencies and/or Urgent Matters

“4.10 To decide whether any ... Non-Executive function, question or matter within the powers or duties of the ... Council ... is urgent and ... a decision must be made before the next scheduled meeting of the ... Council ... and ... if the Chief Executive is satisfied that it is not expedient, practicable or necessary in the circumstances to convene a special meeting of the ... Council ... then:-

“The Chief Executive shall have the power ... to determine the question or matter ... in the name of and without further reference to the ... Council

“The Exercise by the Chief Executive ... of any powers under this delegation shall be subject to the following conditions:-

“(1) that the determination of the question or other matter ... is capable of determination under law in this manner;

“(2) the Chief Executive, ... before making a decision, shall where practical, consult with ... the Chairman of the appropriate Committee in relation to a Non-Executive function;

“(3) the Chief Executive, ... before making a decision shall consult with the Corporate Director (Law and Governance) and Monitoring Officer, the Director of Finance and Economy and Section 151 Officer or their nominated deputy;

“(4) a record of all decisions made ..., together with the consultations referred to in (2) and (3) above shall be made by the Chief Executive ...; and

“(5) any decisions made ... under this provision shall ... be reported to the next scheduled meeting of the ... Council ... which would otherwise have dealt with the question or matter.”

To facilitate the consultation required by paras. (2) and (3) above, this **revised** report is copied to the Chairman of the Planning Committee, the Corporate Director (Law and Governance) and Monitoring Officer and the Director of Finance and Economy and Section 151 Officer, and they are invited to express any views they may have to the Chief Executive.

In terms of urgency, there are currently no scheduled meetings of the Council before 21 May. And in the current circumstances, it is clearly not expedient, practicable or necessary to convene a special meeting of the Council to consider delegating decisions upon the **Three** Matters.

To summon Members to attend such a meeting, at which it would not be possible to maintain social distancing in line with advice from H.M. Government and Public Health England, would be contrary to clear expected standards of public health. Many Members, too, are in the category of persons called “vulnerable” by H.M. Government, and any requirement that were placed upon them to leave their homes should be very limited and only where necessary for their work.

However, as the Chief Planner’s letter pointed out, the current circumstances also require the Council to continue to provide the best planning service possible, prioritise decision-making, and use innovative approaches. At a time of reduced planning officer resources due to sickness, self-isolation, and the need to work at home as much as possible, special control is needed over the number of reports required to Planning Committee, in order to free up scarce resources and enable decision-making to continue. Delegating more decision-making is an important part of this.

Although new legislation and regulations came into force on 4 April which will allow the Council – and the Planning Committee - to hold legally valid “virtual meetings” in due course, this must be implemented by changing the Council’s procedures. Once this has been done, the Planning Committee may meet for the first time since 19 February, but there is a very significant backlog of matters with which it must deal when it meets “virtually”. Moreover, the length of time that those operating, chairing and “attending” a “virtual meeting” can be reasonably expected to use technology (especially VDUs) to stay in contact with a remote “meeting” will be more limited than with a traditional meeting, and this too means that the Committee’s “virtual meetings” must concentrate their time on the most important or major matters, and not be distracted by other matters wherever possible.

There have already been two abandoned Planning Committee meetings (on 18 and 25 March), and in all the circumstances, it is clearly reasonable to regard a decision on delegating decisions on the **Three** Matters to Officers as urgent, in order to enable them to take more decisions themselves as soon as possible.

Under the Constitution, subject to the above, an urgent decision can be taken by the Chief Executive, who must bring independent judgement to bear upon it and record the decision made and the reasons for it, in order that her decision can be reported to the next meeting of the Council (whenever convened) as is required.

In terms of Equalities and Human Rights, the proposals relate only to the procedures and level of decision-making within the Council, contain appropriate safeguards, and do not recognisably interfere with human rights or negatively impact upon persons with protected characteristics.

RECOMMENDATION

Subject to any views which may be expressed by the Chairman of the Planning Committee, the Corporate Director (Law and Governance) and Monitoring Officer and the Director of Finance and Economy and Section 151 Officer,

It is recommended that the Chief Executive, having formally consulted the Chairman of the Planning Committee, the Corporate Director (Law and Governance) and Monitoring Officer, and the Director of Finance and Economy and Section 151 Officer, **determine that:-**

- (i) **the Council grant the delegations to Officers proposed in this revised report in respect of the **Three** Matters for a period of six months, with immediate effect,** and
- (ii) there be a review of the operation of the **three** additional delegations within that period of 6 months.

REVISED REPORT SEEKING DECISION ON AN URGENT MATTER**DECISION-MAKING DURING THE CORONAVIRUS CRISIS: “VIRTUAL MEETINGS”**

Report to: Chief Executive

Copies for Information to: Leader of the Council; Chairman of the Planning Committee; Corporate Director (Law and Governance) and Monitoring Officer; Director of Finance and Economy and Section 151 Officer; Portfolio-Holder for Planning and Development; Vice-Chairman of the Planning Committee and Deputy Portfolio-Holder for Planning and Development; Deputy Leader of the Council and Portfolio-Holder for Legal and Democracy; **Interim** Head of Planning and Development; Spatial Planning Manager; Development Management Manager; Team Leader – Strategic Applications; Senior Planning and Development Solicitor; Member Services Liaison Manager; Member Services Manager (Operational).

Report Author: Principal Solicitor - Strategic Development and Deputy Monitoring Officer, Jeremy Baker (tel.: ext. 574 or email jeremy.baker@ashford.gov.uk).

BACKGROUND

H.M. Government’s Chief Planner’s last “Planning Update Letter”, dated March 2020, was issued to local planning authorities on 23 March. Under the heading, “COVID-19 Advice”, the Chief Planner wrote:-

“... It is important that authorities continue to provide the best service possible in these stretching times and **prioritise decision-making to ensure the planning system continues to function**, especially where this will support the local economy.

“We ask you to take an innovative approach, using all options available to you to continue your service. We recognise that face-to-face events and meetings may have to be cancelled but we encourage you to explore every opportunity to use technology to ensure that discussions and consultations can go ahead. ...

The Government has confirmed that it will introduce legislation to allow council committee meetings to be held virtually for a temporary period, which we expect will allow planning committee meetings to continue.

“We encourage you to be pragmatic and continue, as much as possible, to work proactively with applicants and others...” [emboldening added]

On the same day, the Prime Minister in a televised evening address announced a countrywide “lockdown” with immediate effect. This, together with public health advice issued by the Government and Public Health England, made physical meetings of councillors, and the physical attendance members of the public, contrary to over-riding interests of public health and effectively impossible.

The Secretary of State for Housing, Communities and Local Government then made The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 (referred to as “the Regulations”) on 1 April.

With effect from 4 April, the Regulations have changed the long-standing legal requirements upon local authorities and their committees and sub-committees to hold physical meetings, and to permit the Press and public to attend those meetings.

As an alternative, the Regulations have introduced a new legal type of meeting, namely a meeting of persons not present in the same place, and/or held in “more than one place including electronic, digital or virtual locations such as internet locations, web addresses or conference call telephone numbers”. This type of meeting concept has already become known as a “**Virtual Meeting**”.

Subject to compliance with detailed criteria and conditions, this type of Virtual Meeting is now legally permitted and valid up to and including 6 May 2021.

Since local authorities’ Constitutions, standing orders, etc., do not currently allow VMs to make valid decisions, nor the provision of access to papers, reports etc. to be solely online and not at town halls, civic centres, etc., the Regulations specifically empower local authorities to make standing orders and other rules about VMs, including provisions for voting, access to documents by Members and the public, and remote access to VMs by the public and Press.

On 16 April, I circulated the original version of this report, recommending changes to the provision of hard copy papers to Members as well as the public. Following a discussion with the Leader of the Council, it is not proposed to change the availability of papers to Members at this time. Accordingly, my 16 April report is now withdrawn, and this report is to replace and update it.

IMPLEMENTING “VIRTUAL MEETINGS” IN ASHFORD BOROUGH

Officers have been carrying out research and taking soundings from other authorities and advisers on the subject of VMs since the end of March.

Following the publication of the Regulations, including their criteria and conditions for legally effective VMs, a lengthy conference call (circa 150 minutes) was held between managers and officers in Planning, Legal & Democracy, IT and Communications on 8 April, to plan the introduction of Virtual Meetings (referred to hereafter as “**VMs**”) for the Council’s Planning Committee. Knowledge, testing and research into various commercially-available technology platforms for hosting VMs was reviewed.

It was concluded that, at this early stage, it is not practicable to arrange and hold a lengthy VM of a number of Councillors, as well as officers advising, by means of technology that enables *all* Councillors in attendance *to see and be seen by all* other Councillors in

attendance, as well as being seen by *all* members of the public attending the VM by remote access as defined in the Regulations. Therefore, it is not currently **practicable** to adopt the approach of providing *video* Member attendance and public access to VMs.

However, the Council has a strong desire to convene VMs as soon as possible, and to be in the vanguard of local authorities doing so. Therefore, it is proposed to adopt new technology and Constitutional arrangements for VMs that enable all Councillors in attendance *to hear and be heard by* all other Councillors in attendance, as well as being heard by all members of the public attending the VM by remote access as defined in the Regulations. This *audio* method **in the circumstances** satisfies the Regulations' approach to holding valid VMs.

In practice, there is likely to be the additional ability for Members attending, and members of the Press and public accessing, a VM to see each Member who speaks in turn, one at a time, but this approach is not specifically approved by the Regulations as sufficient for a video VM. Therefore, this will be regarded as an extra facility that the Council is pleased to provide, in addition to an audio-based VM.

On 15, 17 and 20 April, trial private **VMs were** held to test this technology and proposed approach, with almost all members of the Planning Committee and all relevant officers including the Chief Executive and the Corporate Director (Law and Governance) in virtual attendance, and others watching. **These trials** validated the concept proposed, **and also the impracticability of seeking to show all Members' images onscreen throughout a VM - bandwidth capacity being a particular issue in this regard.**

A set of changes to the Constitution is therefore proposed, in order to allow the Council to hold VMs on this model in line with its Constitution as amended. This set of changes includes the changes necessary **to hold VMs of the Planning Committee**, and to **provide online public** access to papers and reports in the current circumstances where the Civic Centre is closed to the public and very few officers are present in that building. **For the same reason, these changes will apply to all public availability of such papers during the crisis.** This set of changes also enables some other VMs to occur, for example of Full Council and potentially of the Cabinet. While, in respect of some other aspects (e.g. the Petitions Scheme) and some Committees, further changes will be necessary in due course, it is desired not to delay holding VMs of the Planning Committee while this is being considered.

It is also necessary to **adapt the Council's existing Scheme of Public Participation into the context of VMs.** The Planning Committee members attending the trial **VMs have been** informed of this proposed adaptation, which is based on the concept trialled at the last Planning Committee meeting that was convened before "lockdown" began, on 18 March. For that meeting, most of the registered public speakers took up an offer to submit a written speech, which was read to the Committee on their behalf by an officer from the Communications team to good effect.

Those Members who commented during the discussion of this proposal on 15 April expressed themselves content to proceed with revised public participation on this basis. It

is possible that enhanced methods of public participation for VMs may be evolved in due course, so adding additional rights for the public will be specifically provided for in the proposed Scheme of Public Participation for Virtual Meetings.

Accordingly, the following are attached to this report:-

Appendix 1: **Procedure Rules for Virtual Meetings etc. (Revised)**, for adoption.

Appendix 2: **Scheme of Public Participation for Virtual Meetings**, for adoption.

Appendix 3: Equality Impact Assessment of the above, for consideration.

COMMENCEMENT, DURATION AND REVIEW OF NEW PROCEDURES AND SCHEME OF PUBLIC PARTICIPATION FOR VMs

It is proposed that **all** the new procedures, and the Scheme of Public Participation for VMs, come into force **immediately** and last for the duration of the applicability of the Regulations, viz. **until the end of 6 May 2021**.

It is not clear whether any or all of the Regulations may be extended and/or made permanent, but in view of the widespread availability of technology it is possible that some of their provisions will be made permanent by the Government or Parliament in due course.

Therefore, it is proposed that during the next 12 months, there will be a review of the operation of the new procedures, in order for a decision to be made as to whether they should be extended and/or made permanent, in either the same or a modified form - if it becomes legally possible to do so.

CONSTITUTIONAL AND PROCEDURAL MATTERS

In terms of the Council's Constitution, making amendments to the Constitution (including the General Procedure Rules, Access to Information Procedure Rules, Scheme of Public Participation and other procedures and schemes) is a Non-Executive question or matter within the powers of the Council. **This applies to both changes proposed as a result of the Regulations, and wider changes under the general law.**

The Chief Executive's delegation to determine Urgent Non-Executive questions or matters within the powers of the Council is in Part 3 of the Constitution, Appendix 5, paragraph 4.10, and (so far as relevant to this report) reads as follows:-

“Civil Emergencies and/or Urgent Matters

“4.10 To decide whether any ... Non-Executive function, question or matter within the powers or duties of the ... Council ... is urgent and ... a decision must be made before the next scheduled meeting of the ... Council ... and ... if the Chief Executive is satisfied that it is not expedient, practicable or necessary in the circumstances to convene a special meeting of the ... Council ... then:-

“The Chief Executive shall have the power ... to determine the question or matter ... in the name of and without further reference to the ... Council

“The Exercise by the Chief Executive ... of any powers under this delegation shall be subject to the following conditions:-

“(1) that the determination of the question or other matter ... is capable of determination under law in this manner;

“(2) the Chief Executive, ... before making a decision, shall where practical, consult with the Leader of the Council or the Chairman of the appropriate Committee in relation to a Non-Executive function;

“(3) the Chief Executive, ... before making a decision shall consult with the Corporate Director (Law and Governance) and Monitoring Officer, the Director of Finance and Economy and Section 151 Officer or their nominated deputy;

“(4) a record of all decisions made ..., together with the consultations referred to in (2) and (3) above shall be made by the Chief Executive ...; and

“(5) any decisions made ... under this provision shall ... be reported to the next scheduled meeting of the ... Council ... which would otherwise have dealt with the question or matter.”

To facilitate the consultation required by paras. (2) and (3) above, **the original version of this report was** copied to the Leader of the Council, the Chairman of the Planning Committee, the Corporate Director (Law and Governance) and Monitoring Officer, and the Director of Finance and Economy and Section 151 Officer, and **they expressed views thereon, which are reflected in this revised report wherever relevant.**

In terms of **urgency**, there are currently no scheduled meetings of the Council before 21 May. And in the current circumstances, it is clearly not expedient, practicable or necessary to convene a Special Meeting of the Council to consider the proposed amendments to the Constitution. To summon Members to such a meeting, at which it would not be possible to maintain social distancing in line with advice from H.M. Government and Public Health England, would be contrary to clear expected standards of public health. Many Members, too, are in the category of persons called “vulnerable” by H.M. Government, and any requirement placed upon them to leave their homes should be extremely limited and only where absolutely necessary for their work.

However, as the Chief Planner’s letter pointed out, the current crisis also requires the Council to continue to provide the best planning service possible, prioritise decision-making, and use innovative approaches. There have already been two abandoned Planning Committee meetings (on 18 and 25 March), and in all the circumstances, it is clearly reasonable to regard a decision on these proposals as urgent, in order to enable decisions to be made as soon as possible.

The next scheduled meeting of the Planning Committee is on 22 April, for which the Agenda has already been published. In order that all necessary arrangements are in place and on

a legal footing for that meeting to occur as a VM, it is important that the proposed amendments are brought into force immediately.

Otherwise, it would be necessary to cancel that Planning Committee meeting and to defer for an unknown period the convening of any VMs, for the reasons stated in the “Background” section above. This would not be in line with the Government’s advice and expectations, nor enable the Council to progress its business and decision-making during whatever period “lockdown” and/or public health advice will make the holding of traditional meetings impossible or undesirable.

However, proceeding as recommended would ease the decision-making delays which have already resulted from the recent cancellation of Planning Committee meetings, and allow VMs of the Planning Committee to address a number of strategic and important applications which are waiting to come before it.

Under the Constitution, subject to the above, an urgent decision can be taken by the Chief Executive, who must bring independent judgement to bear upon it and record the decision made and the reasons for it, in order that her decision can be reported to the next meeting of the Council (whenever convened) as is required.

In terms of Equalities, reference should be made to the Equality Impact Assessment at Appendix 3.

In terms of Human Rights and Data Protection, the proposals relate only to the procedures for decision-making within the Council, contain appropriate safeguards, and do not materially interfere with human rights or data privacy.

RECOMMENDATION

It is recommended that the Chief Executive, having formally consulted **and taken into account the views of** the Leader of the Council, the Chairman of the Planning Committee, the Corporate Director (Law and Governance) and Monitoring Officer, and the Director of Finance and Economy and Section 151 Officer, **determine that:-**

- (i) **the Council adopt with immediate effect, and effective until the end of 6 May 2021, the Procedure Rules for Virtual Meetings at Appendix 1, and the Scheme of Public Participation for Virtual Meetings at Appendix 2; and**
- (ii) there be ongoing monitoring and a review of the operation of the new procedures within the next 12 months.