

**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).

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**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.