

Council

13 October 2020

Interim Decision-Making Arrangements During the Covid-19 Pandemic

Report by the Executive Director, Corporate and Communities

Relevant Portfolio Holder: Communities and Engagement

Purpose

To propose the adoption of revised arrangements for the operation of meetings of the Council and its Committees during the remainder of the 2020/21 Municipal Year in light of the ongoing Covid-19 pandemic.

Recommendations

To **RESOLVE** that:

1. all meetings of the Council, its Committees and Sub-Committees take place virtually for the remainder of the 2020/21 Municipal Year;
2. the Culture, Housing, Environment and Planning Committee (CHEP) be established to discharge the functions of the Environment and Sustainable Transport and Place and Culture Committees for the remainder of the 2020/21 Municipal Year;
3. the membership of the CHEP Committee and any other consequential changes in Committee membership shall be as set out in the late material;
4. the Response and Recovery Committee shall continue to operate for the remainder of the 2020/21 Municipal Year in order to discharge the functions of the Finance and Regeneration and Community and Engagement Committees, to determine matters related to the Council's Covid 19 response, and to determine any urgent matter which falls within the remit of another Strategic Committee if it cannot wait until the next meeting of the Committee in question;
5. the Response and Recovery Committee and the CHEP Committee be classified as Strategic Committees and all relevant constitutional provisions, including call-in, applied thereto;
6. the Childrens and Adults Care and Education Committee recommence its schedule of meetings;
7. the calendar of meetings attached at **Annex 1** be adopted for the remainder of the 2020/21 Municipal Year;
8. Procedure Rules 17(B)(2) (public questions at meetings of Committees) and 17(C)(1&2) (Public speaking on agenda items at meetings of Committees) be modified as set out in paragraph 28 of the report for the remainder of the 2020/21 Municipal Year; and
9. the foregoing arrangements be subject to the provisions for review set out in paragraphs 31 and 32 of the report.

Benefits to the Community:

The proposals will enable the Council to maximise the level of democratic accountability and transparency in its decision making arrangements during the Covid-19 pandemic while safeguarding the health of Members, Officers and the public as they participate in those processes.

Key Points

- A. The existing emergency decision making arrangements introduced at the May Council meeting are now due for review.
- B. The current public health situation does not allow for a return to meetings in person at the Guildhall. The latest Government guidance on the safe use of Council buildings continues to recommend that where meetings can take place digitally, without the need for face-to-face contact, they should do so. It is in any event not feasible to operate anything other than the smallest of Committee meetings within the Council Chamber while observing social distancing guidelines.
- C. A return to meetings within a shared physical space would also put those unable to attend in person due to the need to self isolate or to shield as a result of health vulnerabilities at a disadvantage. This may potentially breach the Council's equalities obligations since many of those at the greatest risk from Covid have protected characteristics.
- D. It is therefore proposed that meetings of the Council and its Committees continue to take place virtually for the remainder of the Municipal Year. The Response & Recovery Committee would continue to meet on a monthly basis with responsibility for matters relating to the Council's Covid response and the functions of the Finance & Regeneration and Community Engagement Committees, both of which would remain in abeyance. The Childrens and Adults Care & Education Committee would be reinstated and a new temporary Culture, Housing, Environment and Planning Committee (CHEP) established to undertake the functions of the Environment & Sustainable Transport Committee and the Place & Culture Committee. All other Committees would resume a normal schedule of meetings where they have not already done so.
- E. These virtual meetings will operate under near normal Constitutional provisions, including the application of call-in requirements for all Committees exercising Strategic and Neighbourhood Committee functions. Most public participation mechanisms will be maintained online. This includes the reinstatement of public question time at the beginning of each Committee and facility for the submission of petitions at meetings. It is not, however, possible at this stage to re-introduce direct public participation in debate on agenda items because of the logistical difficulties of managing large numbers of the public within a virtual meeting environment.
- F. The report proposes review mechanisms which would enable these arrangements to be rapidly adjusted in the event either of improvement or further deterioration of the public health situation.
- G. This report refers to the Strategic Housing & Planning Committee as the Place & Culture Committee and the Finance & Partnerships Committee as the Finance & Regeneration Committee, consistent with the recommendations contained in the preceding item on the agenda.

Context

1. At the outset of the Covid-19 pandemic the Council took the exceptional step of cancelling its formal Committee meetings in the interests of public safety. This ensured that it was well placed to comply with subsequent guidance from the Government on social distancing, and the instructions for people to stay safe in their homes. The transaction of all non urgent business was postponed and urgency mechanisms contained within the Constitution utilised to enable the Chief Executive and Executive Directors to take urgent decisions which would otherwise

have required Member approval in Committee. In order to retain as much democratic oversight as possible, measures were put in place to broaden the consultation with Members and to ensure public notice was given of all decisions taken.

2. Following the introduction in April of temporary Regulations which enable meetings of the Council and its Committees to be held virtually, the first online meeting, of the Licensing Sub-Committee, was conducted on 5th May. Arrangements for a streamlined calendar of virtual meetings through to October were subsequently approved by the Extraordinary Meeting of Council on 19 May. This included the introduction of a Response & Recovery Committee temporarily charged with undertaking the functions of each of the five Strategic Committees.
3. The Response & Recovery Committee has met monthly since May (and twice in September) and those Committees exercising regulatory functions, namely Development Control, the Neighbourhood Planning Sub-Committees and the Licensing Sub-Committee have also continued largely without interruption.
4. As the public health emergency eased during the summer months, thereby freeing up corporate capacity, the range of other Committees resuming their normal schedule of meetings on a virtual basis has been progressively extended. The re-introduction of Neighbourhood Committees in September and the Health & Wellbeing Board on 1 October means that with the exception of the Strategic Committees all others have either already resumed or plans are in hand for them to shortly do so. To date a total of 43 meetings of Committees have been held virtually.
5. The Council is now required to review the operation of the interim decision making arrangements and consider whether circumstances require their continuation or modification beyond this meeting.

Proposals

Virtual Meetings

6. At the Extraordinary Meeting of Council in May it was agreed that a review of the interim arrangements should be undertaken in October in order to determine whether the Covid-19 pandemic had improved to the point where the normal provisions, in particular meetings in person at the Guildhall, could be reinstated.
7. Unfortunately the recent deterioration in the public health situation provides little scope for a safe return to meetings in a shared physical space. The latest Government guidance on the safe use of Council buildings, updated on 29th September, continues to recommend that where meetings can take place digitally, without the need for face-to-face contact, they should do so. Where council buildings need to be used for physical meetings, these meetings must be managed within the Government's social distancing guidance and principles. The 29th September iteration of the Government guidance explicitly reminds local authorities of their powers to host Committee meetings virtually.
8. It is not feasible to operate anything other than the smallest socially distanced meetings within the Council Chamber due to the lack of space in which an appropriate desk layout could be configured. The capacity of the Chamber based on 2m social distancing guidelines is 16 people (22 if the wall separating the Chamber from the Committee Room is removed). This would rise to 22 (29 including the Committee Room) if 1.5m distancing with mitigation measures such

as face coverings is observed. These figures would be insufficient for meetings of the Full Council and would only allow for Strategic Committees, Development Control Committee and others of a similar size to be accommodated if there was little or no provision for members of the public to attend - this would be both unlawful and, in terms of transparency, undesirable. The smallest Committees may be able to meet in this manner but Members, Officers and the public would be so widely dispersed that it would likely be an unsatisfactory experience.

9. The need for ventilation of meeting rooms in order to minimise the risk of transmission of the virus is also likely to create an uncomfortable environment for meetings during the winter months whilst the opening of doors and windows would potentially jeopardise the confidential nature of debates conducted in private session. Other precautions would need to include the cleansing of the Council Chamber and its furniture between each meeting and the recording of the details of all attendees, including any members of the public who could be accommodated, for the purposes of track and trace. It would not be possible to circulate papers at the meeting or to lay out agendas in the public gallery.
10. A return to Guildhall meetings would require the purchase of additional microphone units to facilitate meetings of Full Council since the normal practice of sharing microphones between speakers is not recommended in the current circumstances. The cost of doing so would amount to approximately £29,000.
11. Meetings within a shared physical space would also put those unable to attend in person due to the need to self isolate or to shield as a result of health vulnerabilities at a disadvantage. This may potentially breach the Council's equalities obligations since it has now been established that many of those at the greatest risk from Covid have protected characteristics.
12. This risk would not be completely removed by the introduction of hybrid meetings which blend both in person and virtual attendance because those present virtually would remain at a practical disadvantage in terms of participation in the meeting. Hybrid meetings are in any case considered undesirable because of the complications they present procedurally and in respect of the management of the meetings.
13. In any assessment of risk the Council must also be mindful of its community leadership role. As the Public Health Authority it must be seen to uphold best practice. If it fails to do so it may distract from or discredit key public health messaging designed to ensure the safety and wellbeing of local residents and ease the burden on the National Health Service.
14. It is recognised that virtual meetings inevitably lack some of the fluidity of those in the Council Chamber. In the absence of physical cues such as nods and raised hands, and with less immediate forms of informal communication, they require more pre-planning and structure and are more resource intensive to deliver.
15. Nevertheless, online meetings have proved to be an effective means of transacting the Council's business. No major technical issues have been experienced and Members and Officers are acquiring growing familiarity with the technology and the conduct of virtual meetings. The live streaming of every meeting has ensured continuing public access to proceedings, arguably enhancing

it for those Committees, including Neighbourhoods, which were previously not webcast.

16. For the reasons outlined above it is therefore proposed that all meetings of the Council and its Committees and Sub-Committees continue to be held virtually for the remainder of the Municipal Year. It appears unlikely that the public health situation will improve sufficiently over the winter months to allow for the safe resumption of conventional meetings in a shared physical space and the agreement of interim arrangements for the entirety of this period will provide for a degree of certainty and continuity in the Council's governance arrangements (subject to the arrangements for review set out later in the report). It will also ensure that, subject to corporate capacity, meetings will be able to continue regardless of any further local and/or national restrictions, including a full lockdown.
17. The temporary Regulations which facilitate remote meetings are currently due to expire on 7 May 2021, just prior to the commencement of the new Municipal Year on 18 May. No meetings are presently scheduled between these two dates but in the event that the Regulations are not extended and it is necessary for a Committee or Sub-Committee to meet it will have to do so in person.

Strategic Committees

18. At its meeting in May Council decided to temporarily fold the functions of all five Strategic Committees into a single Response and Recovery Committee meeting on a monthly basis in order to streamline the decision making process and ensure that the focus of Officers and Members was not diverted from the delivery of critical front line services at the height of the health emergency.
19. This arrangement has provided simplicity, responsiveness and eliminated duplication caused by references between Committees. It was, however, intended only as a short term model to deal with urgent business at a time when corporate capacity was particularly stretched.
20. The public health situation continues to place significant demands on organisational capacity. As Strategic Committees tend to consume substantial amounts of senior Officer and Member time in preparation it is not yet possible to reinstate all five. It would in any event be difficult to accommodate a full schedule of Strategic Committees because of the need to re-arrange Neighbourhood Committee meetings to ensure that none meet simultaneously (the number of Democratic Services and ICT staff required to deliver a virtual meeting means that it is very difficult to support more than one at a time). This leaves few dates available on which the Committees could each meet.
21. Nevertheless, it is not sustainable to restrict decision making business only to urgent matters for a considerable period of time - arrangements need to be made to enable delivery of the Council's programme of planned projects and initiatives. This cannot easily be managed through one Strategic Committee. There is also a need to maximise the opportunities for Members to participate in the Strategic Committee process.
22. It is therefore recommended that the Childrens and Adults Care and Education Committee (CACE) be re-introduced together with a temporary Culture, Housing, Environment and Planning Committee (CHEP) dealing with the functions of both

the Environment and Sustainable Transport Committee and the Place and Culture Committee. The Response and Recovery Committee would be retained until the end of the Municipal Year in order to deal with the Council's Covid response and the functions of the two Strategic Committees which remain in abeyance, namely Finance and Regeneration and Community and Engagement. Whilst its business would be somewhat reduced it is proposed that it continue to be scheduled to meet on a monthly basis in order to provide maximum flexibility in the event of the need for urgent decisions to be taken in response to the public health situation. For the same reason it would also be authorised to deal with any urgent matter which could not be dealt with in time by either CACE or CHEP.

23. The CHEP Committee would consist of 11 Members, consistent with all other Strategic Committees. Proportionality rules require these seats to be allocated on a ratio of 9 members of the Liberal Democrat Group and 2 members of the Conservative Group.
24. It will be necessary for Groups to nominate members to sit on the CHEP Committee. Details of these nominations will be included in the late material to be circulated ahead of the meeting. The memberships of the Response and Recovery Committee and CACE have already been established but may be varied by Council subject to compliance with the proportionality rules.

Call-In

25. It is proposed that both the Response and Recovery Committee and the CHEP Committee be formally classified as Strategic Committees of the Council. The principal effect of this would be to ensure that their decisions are subject to the usual call-in arrangements, which is not presently the case with the Response and Recovery Committee. This designation already applies to CACE. Constitutional provisions exist for decisions to be exempted from call-in where the matter is urgent and delay would seriously prejudice the Council or the public's interests.

Public Participation

26. Public participation arrangements are more difficult to manage within virtual meetings than those held in a shared physical space because the need for advance notice of attendance inevitably restricts opportunities for spontaneous participation. It is also difficult to accommodate large numbers of members of the public within virtual meetings because of bandwidth pressures and the significant resource implications arising from the need to manage virtual attendees - this includes the issue of invitations, briefings in advance on system requirements and virtual meeting protocols and management of each individual's entry and departure at the appropriate point within the meeting.
27. Notwithstanding these challenges, mechanisms for public participation, including speaking on planning and licensing applications and the submission of questions prior to the start of meetings, have for the most part either been retained throughout the pandemic or subsequently re-introduced, sometimes with necessary and pragmatic modification to allow for the different nature of virtual meetings. Direct participation in the debate on individual agenda items, has, however, yet to be reinstated because of the difficulties set out above.
28. For the avoidance of doubt, it is proposed that the normal constitutional provisions for public participation will henceforth apply to all virtual meetings of Committees

including the Response and Recovery Committee and the CHEP Committee, save for the two temporary exceptions set out below;

1. Procedure Rule 17(b)(2) (Public Questions at Meetings of Committees) be modified to require notice of the intention to submit questions to Neighbourhood Committees to be received by 10am on the working day prior to the meeting - the provisions presently do not require any advance notice for Neighbourhood Committees which is not practicable for virtual meetings where it is necessary to share links with participants beforehand. This would largely mirror similar provisions already in force for Strategic Committees but would not require the detail of the question to be submitted in advance; and
2. Procedure Rule 17(C)(1&2) (Public Speaking on Agenda Items at Meetings of Committees) be disapplied. This would maintain the current suspension of the right for members of the public to speak in person on individual agenda items because of the logistical difficulties in managing potentially large numbers of speakers within virtual meetings. Wherever practicable written representations, if received, in advance of the meeting could, however, be forwarded to Members of the relevant Committee.

29. Subject to any review of arrangements undertaken in accordance with the provisions set out in paragraphs 31 and 32 these temporary modifications to Procedure Rules will apply to the end of the current Municipal Year.

Calendar of Meetings

30. A modified calendar of meetings for the remainder of the Municipal Year is set out at **Annex 1**. This includes provision for all Committees and Sub-Committees except for those Strategic Committees which remain suspended. The calendar follows the pattern agreed prior to Covid as closely as possible but some meetings have had to be moved to reflect the fact that the Council does not have the capacity to operate two virtual Committee meetings simultaneously.

Review Provisions

31. In order to provide flexibility to respond appropriately to any changes in the course of the pandemic it is proposed that the Chief Executive, in consultation with the Monitoring Officer, the Director of Public Health, the Leader of the Council and the Leader of the Opposition be authorised to re-introduce meetings in person and all other normal constitutional provisions at an earlier date in the event of improvement in the public health situation.
32. Conversely, further deterioration in the public health situation may require additional limitations on the Council's decision making arrangements because of the need to concentrate corporate capacity on an emergency response to protect the lives and wellbeing of residents. In these circumstances it is considered more appropriate that any such measures should be agreed directly by Members in the Response and Recovery Committee.

Resource Implications

33. The technical and procedural complexity of virtual meetings means that they will, continue to require much more intensive Officer support including for most meetings the attendance of two additional Democratic Services Officers to assist in monitoring Members' virtual attendance and communication through the Chat function and an ICT technician to relay the broadcast to YouTube and ensure the feed is sustained for the duration of the meeting - if the link fails, the meeting must be adjourned until such time as the live coverage is reinstated.
34. Modest savings are anticipated as a result of the lack of expenditure on hall hire for Neighbourhood Committees and other meetings normally held outside of the Guildhall.

Legal Implications

35. The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 relating to virtual Committee meetings were made under section 78 of the Coronavirus Act 2020 and apply notwithstanding any other legislation or current or pre-existing standing orders or any other rules of the Council governing meetings. Wherever there is a conflict, the Regulations take precedence in relation to any remote meeting. They remain valid until 7th May 2021.

Equalities Analysis

36. An equalities analysis was undertaken in May 2020 in respect of the introduction of virtual Committee arrangements and submitted to the Extraordinary Meeting of Council on 19 May. This has been reviewed and minor updates incorporated. No adverse impact on groups with protected characteristics has been reported in respect of the operation of virtual meetings.
37. Meetings within a shared physical space would also put those unable to attend in person due to the need to self isolate or to shield as a result of health vulnerabilities at a disadvantage. This may potentially breach the Council's equalities obligations since it has now been established that many of those at the greatest risk from Covid have protected characteristics.

Health Implications

38. The adoption and extension of the interim decision making arrangements is designed to maximise the Council's ability to safeguard the health of Members, Officers and the public and to support the response of local health and care services to the Covid-19 pandemic. Health Protection legislation and guidance continues to be published and updated regularly by national bodies and therefore subject to change. Whilst we need to remain agile to react to this, some degree of social distancing is likely to remain in place over the winter and into Spring 2021. The continuation of virtual Committee meetings is a means of supporting the public health requirements during the course of the emergency.

Background papers: held by author of the report - Gary Marson, Head of Democratic and Electoral Services, email gary.marson@kingston.gov.uk

- Proportionality Calculations October 2020

- Email containing Covid Safe capacities for Council Chamber dated 1/10/20
- Updated Equalities Assessment, October 2020.