

Council

29 April 2021

Interim Decision-Making Arrangements During the Covid-19 Pandemic

Report by General Counsel, and Monitoring Officer

Relevant Portfolio Holder: Communities and Engagement

Purpose

The purpose of this report is to identify options for the delivery of meetings of the Council and its Committees upon the expiry of temporary Regulations which permit meetings to take place virtually.

Recommendations

To **RESOLVE** that

either

In the event that remote attendance at local authority meetings continues to be lawfully permitted:

1. all meetings of the Council and its Committees, Sub-Committees and other bodies be held virtually up to and including the meeting of Council on 13 July 2021;
2. The modifications to 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) approved at the meeting of Council on 13 October 2020 continue to be applied up to and including the meeting of Council on 13 July 2021;
3. an in person Mayor Making ceremony be held in the grounds of the Guildhall on 18 May 2021; and
4. 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 a significant improvement in the public health situation.

Or

In the event that remote attendance at local authority meetings is not lawfully permitted:

the proposals set out in paragraph 36 be implemented for the period up to and including 20 July 2021.

(late material to be circulated in advance of the meeting will provide Members with the outcome of the anticipated High Court declaration on the lawful status of virtual meetings and may result in some necessary modification of the recommendations set out above)

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. Meetings of the Council and its Committees are presently being held virtually in order to ensure the safety of participants during the Covid-19 pandemic. The temporary Regulations which expressly permit remote attendance at meetings are due to expire on 6 May and the Government has indicated that they will not be extended beyond this point. However, the High Court was due to hear a claim on 21 April, the day on which this agenda was published, that the existing legislation which governs local authority meetings does in fact permit remote attendance despite it having been drafted many years prior to the development of the technology which facilitates such a concept. The outcome of that hearing will be reported in late material.
- B. This report therefore examines options for the safe conduct of the Council's meetings in the period to July 2021 based both on the possibility of a lawful continuation of virtual meetings or the requirement for a return to face to face meetings.
- C. Given current Covid case rates, the continuing need to minimise the risk of transmission of the virus, the likelihood that a significant proportion of those who would be required to attend meetings will not have been fully vaccinated by May and the satisfactory conduct of virtual meetings to date, it is recommended that if the option to meet virtually remains available meetings should continue to take place online up to and including Council on 13 July. In order to ensure that a Mayor Making ceremony is able to take place this would be separated from the Annual Meeting of Council in May and held outside, in the grounds of the Guildhall on the same day.
- D. If, however, the High Court finds that remote attendance is not permitted by the current legislation it will be necessary to return to face to face meetings from 7 May. In this eventuality it is recommended that all meetings between 7 May and 21 June, the earliest date on which all restrictions on indoor gatherings may be removed, be rescheduled to later in June or July so that they might be able to take place in person under normal, or near normal, conditions. Those meetings which cannot be rescheduled because of the time critical nature of the business to be conducted would meet in person in the Guildhall with Covid safe mitigation measures in place and reduced capacity for Officers and members of the public to ensure social distancing requirements can be maintained.
- E. Meetings which could not be safely accommodated in the Guildhall because of the likely attendance would need to be relocated to a larger venue such as the Kings Centre in Chessington. Conversely, Neighbourhood Committees, which usually tend to be held at smaller off site venues, would be relocated to the Guildhall to maximise attendance and ensure the proceedings could continue to be live streamed.
- F. In any eventuality a report will be submitted to the next meeting of Council in July reviewing the arrangements in the light of the public health situation prevailing at that time.

Context

1. At the outset of the Covid-19 pandemic in March 2020 the Council took the exceptional step of cancelling its formal committee meetings to ensure compliance with 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 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. The Council was able to reinstate its Committee meetings in virtual form in May 2020 following the introduction of The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 which enabled local authority meetings to take place online for the period to 6 May 2021
3. An initially streamlined schedule of meetings was progressively extended so that by October 2020 most Committees had been reintroduced and a near normal calendar was in effect save for the operation of a single Response and Recovery Committee undertaking the functions of all five of the Strategic Committees
4. In October 2020 Council agreed that all meetings should continue to take place virtually for the remainder of the Municipal Year due to the deteriorating public health situation. A temporary Culture, Housing, Environment and Planning Committee was also established to discharge the functions of the Environment and Sustainable Transport and Place and Culture Committees and the Children and Adults Care and Education Committee was reinstated, bringing the total of Strategic Committees operational to three.
5. A report elsewhere on this agenda sets out proposals for the streamlining of the Council's Strategic Committee structure. The new arrangements are due to come into effect from the commencement of the 2021/22 Municipal Year and the temporary Response and Recovery Committee and Culture, Housing, Environment and Planning Committee will cease to operate. Having established the preferred Committee model the Council must now determine the form in which these meetings take place during the ongoing pandemic.

Virtual Meetings

6. To date a total of 125 meetings of Council and its Committees have been held virtually
7. Online meetings have proved to be an effective means of transacting the Council's business. No major technical issues leading to the interruption of proceedings have been experienced and Members and Officers quickly adjusted both to the technology and the conduct of virtual meetings. Remote meetings, whilst more resource intensive in terms of the number of Officers required to support them, have delivered significant benefits. The reduction in travel to and from the Guildhall and usage of electronic agendas minimises the environmental impact of meetings and helps enhance the work-life balance for all participants. Online meetings have also facilitated higher levels of Member attendance.
8. Public participation arrangements are more difficult to manage within virtual meetings because the need for advance notice of attendance inevitably restricts opportunities for spontaneous participation. It is also difficult to accommodate large numbers of the public within virtual meetings because of bandwidth pressures and the significant resource implications arising from the need to manage virtual attendees. Nevertheless, the usual mechanisms for public participation, including speaking on planning and licensing applications and the submission of questions,

have been maintained save for slight modifications to Procedure Rules. These require advance notice of the intention to submit questions to Neighbourhood Committees and suspend public speaking on individual agenda items.

9. In some cases the virtual nature of the meetings has actively encouraged greater public participation by removing obstacles faced by residents who, for a number of reasons including ill health, disability or caring responsibilities are unable to easily travel to the Guildhall and providing a more comfortable environment for those who might lack confidence in speaking at a meeting in person. There have been no reports of residents unable to engage in the proceedings as a result of digital exclusion and the option to dial in by telephone has enabled the continuing participation of individuals where an internet connection is either absent or fails.
10. The live streaming of every meeting has ensured continuing public access to proceedings, arguably enhancing it for those Committees, including the Neighbourhood Committees and Audit, Governance & Standards, which were previously not webcast, thereby improving transparency and accountability. Prior to the pandemic the webcasting of meetings was normally restricted to Council, Strategic Committees and Development Control. Where direct comparisons are possible, overall viewing figures for virtual meetings streamed live on the Council's YouTube channel have been slightly higher than pre-pandemic meetings webcast from the Council Chamber.
11. The Council's experience corresponds closely with the national picture reported in the Government's one year review of the statutory measures put in place in response to the Covid-19 pandemic. The report, presented to Parliament in March 2021, acknowledged that:

"Local authorities have consistently highlighted that remote meetings have been beneficial in terms of enabling councillors to balance work and caring responsibilities, had a positive environmental impact, increased public participation and member attendance, and that councils welcome the flexibility to hold in person or hybrid meetings under the regulations as they determine appropriate."
12. The Government has called for the submission of evidence with a view to examining the desirability of permanent legislative change to permit the conduct of meetings virtually. However, in the short term it has also indicated that the temporary Regulations will not be renewed upon their expiry on 6 May and signalled its expectation that in the light of the successful vaccination programme and the reduction in cases of Covid-19 local authority meetings will resume in person either from that date or from 17 May when it is anticipated that a much greater range of indoor activities will be able to re-commence under the Roadmap out of lockdown.
13. Guidance on the safe use of Council buildings has been updated to specifically refer to formal meetings of Committees. This requires local authority meetings taking place in person to follow the principles set out in the government's [working safely guidance](#). Members, Officers and others attending physical meetings will be required to maintain social distancing wherever possible. Where the social distancing guidelines cannot be followed in full in relation to a particular meeting, Councils are asked to consider redesigning the meeting to maintain a 2m distance or 1m with risk mitigations where 2m is not viable.
14. While the Government acknowledges that Authorities have a legal obligation to ensure that the members of the public can access meetings, it recommends that

they continue to be permitted to do so virtually until at least 21 June, at which point it is anticipated that all restrictions on indoor gatherings will have been lifted in line with the Roadmap.

Options

15. The effect of the expiry of the temporary provisions is at present uncertain. On the day on which this agenda was published The High Court heard a claim asking it to determine whether virtual meetings are permitted under the pre-existing statutory arrangements. The outcome of that hearing is not yet available but will be reported in late material for this meeting.
16. If, notwithstanding the expiry of the temporary Regulations, the Court rules that online attendance at meetings is lawful the Council will need to decide if it wishes to extend its virtual meeting arrangements into the new Municipal Year.
17. Given current case rates, the continuing need to minimise the risk of transmission of the virus, the likelihood that a significant proportion of those who would be required to attend meetings will not have been fully vaccinated by May and the existence of a viable online alternative to in person meetings, it is recommended that if the option to meet virtually remains available meetings should continue to take place online up to and including Council on 13 July. This would complete the full cycle of meetings in a consistent manner and provide scope for any slippage in the roadmap target date of 21 June for the removal of all restrictions. Such an arrangement would ensure equality of access for all Members and the public participating in the meeting regardless of health, disability, vaccination status or self isolation requirements.
18. In these circumstances it is proposed that a separate Mayor Making event be conducted outside, in the Guildhall grounds, on the same day as the Annual Meeting of Council in order to maximise the number of civic guests who could safely attend. As the proceedings are ceremonial in nature they do not need to form part of the formal Annual Meeting and would, of course, be difficult to replicate in a virtual environment.
19. Subject to a further review of the public health situation at the 13 July meeting of Council it would be anticipated that meetings could then resume in person. The generally small scale Committees and Sub-Committees which typically meet over the summer recess would help test and assess levels of risk ahead of the busy September cycle of meetings.
20. In these circumstances 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 would 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.
21. If, however, the High Court rules that virtual meetings are not lawful beyond 6 May all meetings after that date would have to be conducted in person. The options open to the Council with respect to arrangements for these meetings from May to the July meeting of Council) are set out below.
 - A) Extension of Delegation to Officers
22. Government guidance suggests that Councils could consider the use of existing powers to delegate decision making to Officers in order to minimise the number of meetings held if that is deemed necessary. Greater usage was, by necessity, made of Officer decision making for a brief period at the beginning of the

pandemic, albeit with extensive Member consultation. However, the loss of democratic accountability is not a desirable solution where alternatives exist and this approach is therefore not recommended.

B) Rescheduling of the Calendar of Meetings

23. The Calendar of Meetings for the 2021/22 Municipal Year, due for approval under a separate item on this agenda, schedules 17 meetings between 7 May and 21 June, the earliest date on which all restrictions on indoor gatherings may be removed. A significant number of these could be delayed to late June and July in order to allow the meetings to take place in person under normal, or near normal, conditions. A revised draft calendar of meetings which could if necessary be adopted for this period is attached at **Annex 1** (further changes may be required dependant upon the nature of the business due to come forward to those meetings). Despite the more concentrated programme only one extra meeting (of the Kingston Town Planning Sub-Committee) has had to be scheduled for after the commencement of the school summer holidays, a time when most Committees are normally in recess.
24. Where it is not possible to rearrange meetings because of the time critical nature of the business to be conducted some form of alternative arrangements set out in Options C-E below will need to be implemented.

C) In Person Meetings With Full Member Attendance

25. The capacity of the combined Council Chamber and Committee Room space with 1.5m social distancing is 29 people (this may vary slightly on a meeting to meeting basis depending on actual desk configurations). This is sufficient to physically accommodate most Committee meetings with some adjustments to the usual arrangements for risk mitigation purposes. These would include the wearing of face coverings, perspex screens between desks and the allocation of one microphone per person rather than shared usage. In order to reduce the number of participants Officer attendance would be kept to a minimum. All attendees would need to supply their own water and other refreshments
26. Some very limited provision of no more than 8-10 seats could be made for attendance by the press and public on a pre-booking basis and contact details of all those present would need to be recorded for test and trace purposes. No papers would be laid out in the public gallery. Online public access to live streams of meetings would be maintained through the use of the fixed webcasting system in the Chamber.
27. These measures, in particular the wide dispersal of seats and limited public access, would fall short of an optimum meeting experience but in the circumstances are sufficient for the conduct of a lawful meeting.
28. Meetings of Full Council, and any meetings of Committees such as Planning where it was considered necessary to provide a larger public gallery could not be accommodated at the Guildhall and would therefore need to be relocated to a larger venue elsewhere in the Borough, such as the Kings Centre, Chessington. This would incur additional costs of approximately £2-3,000 per meeting for venue hire and the hire of microphones and other Audio Visual equipment including cameras to enable the live streaming of the meeting.
29. With the exception of Kingston Town all Neighbourhood Committee meetings normally take place away from the Guildhall, at a variety of community venues around the borough. Many of these venues would be unable to accommodate

socially distanced meetings, nor do they generally have facilities for the live streaming necessary to provide meaningful public access to the meeting. If it is necessary to hold in person meetings it is therefore proposed that all Neighbourhood Committees in June and July take place at the Guildhall to ensure sufficient space for all Members to attend with appropriate social distancing, adequate control of all other risk mitigation measures and the ability to broadcast proceedings to the public.

D) In Person Meetings With Limited Member Attendance

30. A variation on the proposal set out in C) above would be for in person meetings to be conducted with reduced numbers of Members in attendance. The quorum for meetings of Council and most Committees is one quarter of the total membership provided that it is no less than three. On this basis Strategic Committee meetings could proceed with a minimum of four Members (assuming the increase in the size of the Committees proposed elsewhere on this agenda is approved) and Council with 12.
31. Such a significant reduction in the numbers in attendance would greatly minimise transmission risks and simplify the logistical arrangements for the meetings, as well as helping to protect Members who may be vulnerable or shielding. However, it presents potential issues around the selection of those Members due to participate and the enforceability of informal agreements on numbers and gives rise to deficits in democratic representation and oversight.
32. For these reasons a restricted Member attendance is recommended as a solution only for the Annual Meeting of Council on 18 May. The only formal business which the Annual Meeting must conduct relates to the appointment of memberships of Committees. The remainder of the proceedings are normally devoted to the Mayor Making which is a ceremonial occasion that can be separated from the formal meeting as described elsewhere in this report. A quorum only Council meeting could be accommodated in the Guildhall thereby avoiding the need for and expense of external venue hire.

E) Informal Virtual Meetings With Subsequent Ratification

33. The limitations on Members ability to participate in the decision making process if meetings are reduced in size could be overcome through the use of informal virtual meetings of Committees. These would have no legal status but would provide an opportunity for all Members to engage in the proceedings and agree recommendations for subsequent formal ratification either by a quorum of Members meeting in person and effectively acting as the relevant Committee or by Officers utilising urgency powers.
34. While such arrangements would maximise Member participation they are potentially problematic. The quorate meeting would still need to take account of all relevant considerations in reaching its decision, particularly in respect of planning and licensing applications, and thus there could be no guarantee that it would approve the recommendations presented to it. Similarly, Officers could not be fettered by the recommendations of an informal meeting when reaching a decision delegated to them. The potential vulnerability to challenge means that this approach cannot be recommended.

Conclusions

35. If the High Court finds that meetings may continue to take place virtually it is recommended that in the interests of the safety of all participants and to ensure

equality of access all meetings remain online up to and including the scheduled meeting of Council on 13 July with the continued application of all current Constitutional modifications to public participation arrangements. At this point a decision would be taken on whether face to face meetings could immediately resume. The review mechanism set out in paragraph 20 would provide the flexibility to re-introduce meetings in person at an earlier date in the event of a sudden improvement in the public health situation.

36. If virtual meetings cannot be lawfully held beyond 6 May the following arrangements are recommended in order to balance the need for public safety with proper democratic representation and the efficient transaction of business;
- all Committees due to meet between 7 May and 21 June which are not time critical be rescheduled to a date after 21 June, at which point it is anticipated that they will be able to meet in person without restrictions. This would include the rescheduling of Council from 13 to 20 July; (A proposed calendar of meetings for this eventuality is attached at Annex 1)
 - the Annual Meeting of Council on 18 May be held at the Guildhall with only the 12 Members sufficient to form a quorum present in person with Groups invited to nominate attendees based on their overall representation on the Council (ie: 10 seats for the Liberal Democrat Group and 2 seats for the Conservative Group)
 - a separate Mayor Making ceremony be held in the grounds of the Guildhall on 18 May, prior to the Annual Meeting;
 - those meetings of Committees which cannot be rescheduled be held on the dates proposed in the draft calendar of meetings for the 2021/22 Municipal Year considered by the Response and Recovery Committee on 25 March 2021 with the application of all risk mitigation measures as may be appropriate including those set out in paragraphs 25-26;
 - The 20 July meeting of Council and other meetings which by virtue of the number of individuals who need to be in attendance cannot be accommodated in the Guildhall be held at suitable venues elsewhere in the Borough;
 - All meetings of Neighbourhood Committees prior to the July Council meeting be held at the Guildhall;
 - all meetings of Council and Committees up to and including the July Council meeting continue to be live streamed;
 - the arrangements be further reviewed at the meeting of Council in July; and
 - the Chief Executive Officer, 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 make any such adjustments to the arrangements set out above as may be required in the event of a material change in the public health situation.

Resource Implications

37. The technical and procedural complexity of virtual meetings means that they would continue to require more intensive Officer support, though the need for this is diminishing over time as familiarity with the technology continues to develop. Modest savings of around £2-3,000 would derive from the lack of expenditure on

hall hire and external Audio visual costs for Neighbourhood Committees during the June/July cycle of meetings.

38. Some additional costs are associated with a return to face to face meetings, principally those where the numbers in attendance would require the use of a large external venue. As indicated in paragraph 28 hall hire, equipment and A/V costs for large off site meetings are likely to amount to £2-3,000 per meeting, a total of £8-£12,000 if it is necessary to relocate four meetings during this period. This would be slightly offset by the same savings identified in paragraph 37 relating to Neighbourhood Committees if they were relocated to the Guildhall. Other Covid safe mitigation measures could be implemented at little or no cost.

Legal Implications

39. The legal implications of the anticipated High Court declaration on the status of virtual meetings will be set out in the late material to be issued upon receipt of the Court's decision.

Equalities Analysis

40. 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 subsequently reviewed and updated but no adverse impact on groups with protected characteristics has been reported in respect of the operation of virtual meetings. An analysis of the implications of a return to face to face meetings with mitigation measures will be included within the late material.

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

- Viewing Data for Webcasts and Live Streams of Committee meetings
- Letter from the Ministry of Housing, Communities and Local Government to Council Leaders, dated 25 March 2021