

To: Council
24 November

Meetings Arrangements
Executive Director: Delivery – Democratic & Registration Services

1 Purpose of Report

- 1.1 This report seeks council approval to the governance arrangements for councillor decision-making meetings when the current arrangements expire on 31 December 2021.

2 Recommendations

- 2.1 **That the current arrangements for council, executive and committee meetings agreed at the 28 April 2021 council meeting remain in place for a further three months until 31 March 2022.**
- 2.2 **That before the arrangements expire, the decision whether to extend them for a further three months until 30 June 2022 is delegated to the Chief Executive in consultation with the Leader of the Council.**
- 2.3 **That in the limited circumstances where a decision is reserved in law to the council and cannot be delegated a quorate in-person meeting of the council will be held.**
- 2.4 **That all non-decision-making meetings continue to take place remotely.**
- 2.5 **That the suspension of the six-month councillor attendance rule, set out in s85 of the Local Government Act 1972, is extended to the next Annual Council meeting currently scheduled for 18 May 2022. Should the interim meetings arrangements continue beyond that date a decision to extend the suspension further is delegated to the Chief Executive in consultation with the Leader of the Council.**

3 Reasons for Recommendations

- 3.1 The Local Government Act 1972 requires that all councillors must be physically present at decision-making council/committee and executive meetings to be part of the quorum and to vote. The council agreed specific meeting arrangements to enable effective decision-making in a covid secure way, which cease to be in place from 31 December 2021 and the council is asked to agree meeting arrangements going forward, taking account of the high and rising covid infection rate in the Borough.
- 3.2 The suspension of the six-month councillor attendance rule should not be required beyond the next Annual Council Meeting.

4 Alternative Options Considered

- 4.1 Options to ensure the council can conduct its business are limited while measures to work covid-securely are in place and wholly remote meetings for council/committee/executive meetings are not legally permissible.

5 Supporting Information

- 5.1 From 7 May 2021 Regulations permitting remote council, executive and committee meetings ceased to be in force. In response to this the council agreed interim meeting arrangements at the Annual Council Meeting on 28 April 2021 which enabled the council to undertake its business in a covid-secure way. These arrangements are:
- Non-executive decision making is delegated to the Chief Executive who can further delegate decisions to officers as appropriate
 - Executive decisions are delegated to individual executive members
 - The executive, council and its committees meet on an informal advisory basis only, to advise the decision-maker of their views. These meetings are held virtually and in public for transparency. The final decision is made by the relevant executive member or the Chief Executive/officer taking account of the views expressed at the informal remote meetings. Where a report contains an officer recommendation that is not supported at the informal meeting, a quorate in-person meeting of the committee is set up to consider the matter as soon as practicable. These meetings are held in accordance with the statutory access to information rules relating to the publication of notice of the agenda and public meetings. There have been four such meetings since the arrangements have been put in place.
- 5.2 There is no statutory requirement for non-decision-making meetings to be held in person and these continue to be held remotely.
- 5.3 These arrangements were reviewed in July 2021 and there was no proposal to end them at that time.
- 5.4 Since the interim arrangements have been put in place the covid compliant requirements have been relaxed, and the council has been considering how to move back to in-person council/committee/executive meetings in a covid-secure way whilst maintaining the benefits that holding meetings remotely has brought which include:
- Public meetings are accessible to a wider range of members of the public as proceedings can be watched live or at a later date, providing greater democratic transparency and accountability
 - Public engagement at meetings is better, particularly at overview and scrutiny
 - Councillors' attendance at remote meetings is on average 10% better and increased engagement with overview and scrutiny activity is even greater
 - Councillors with other commitments can more easily join a remote meeting and move between them
 - Officers and councillors have been able to achieve a better life balance when they don't have to travel to meetings
 - The council's green footprint is lower due to reduced travel/lighting/heating
 - Meeting rooms can be freed up for community events
- 5.5 It has proved to be quite a challenge to be able to live stream the in-person quorate meetings with some participants in the room, others joining remotely and members of the public in the room seeing and hearing remote contributions. Members of the public have not wished to attend these meetings in person, preferring to contribute remotely so the impact to date has been minimal. The council's ICT team is investigating audio-visual meeting room solutions to resolve this issue however a solution is unlikely to be in place before mid-January 2022.

- 5.6 The impact of the Time Square building works has also been a factor affecting the council's ability to hold even the small quorate public meetings in Time Square while building works are on-going and the building is not open to the public.

Proposals for meetings

- 5.7 The increasing covid rates at present in the Borough indicate that the council should exercise caution moving to in-person meetings and it would make sense to extend the current decision-making arrangements for a further three to six months.
- 5.8 It is therefore proposed that the current arrangements for council/committee/executive meetings agreed at the 28 April 2021 council meeting remain in place for a further three months until 31 March 2022. Before the interim arrangements expire the Chief Executive, in consultation with the Leader of the Council, will decide whether to extend the arrangements for a further three months until 30 June 2022.
- 5.9 For clarity the following will continue to meet as informal advisory bodies only with decision-making delegated to an executive member or officer:
- Council
 - Executive (and Executive Committees/Boards)
 - Appeals Committee
 - Appointment Committee
 - Employment Committee
 - Governance & Audit Committee (and sub-committees/panels)
 - Licensing & Safety Committee (and sub-committees/panels)
 - Planning Committee
- 5.10 In the limited circumstances where a decision is reserved in law to the council and cannot be delegated a quorate in-person meeting of the council will be held.
- 5.11 All non-decision-making meetings will continue to take place remotely.

Six-month rule for councillor attendance at meetings

- 5.12 At the Annual Council meeting on 28 April 2021 the six-month councillor attendance rule set out in the Local Government Act 1972 s85 was suspended for 12 months. This suspension was agreed so that any councillor who sat predominantly on decision-making committees would not fall foul of the rule due to the meeting arrangements which were put in place. This suspension will no longer be required as decision-making committees move to meet in person. It is proposed therefore that the suspension is extended to the next Annual Council Meeting, currently scheduled for 18 May 2022. From then the legal provisions will apply and any councillor who fails to attend any of the meetings of the bodies listed in the membership list agreed at each Annual Council Meeting will not have satisfied the requirements of s85. If the interim meetings arrangements continue beyond 18 May a decision to extend the suspension further will be taken by the Chief Executive in consultation with the Leader of the Council.

6 Consultation and Other Considerations

Legal Advice

- 6.1 Until March 2020 the council adhered to the national consensus within local government that Schedule 12 of the Local Government Act 1972 required meetings

to be held ‘in person’ (i.e. with participants gathering to meet face to face at a physical location with observers coming to the same location).

On 25 March 2020 in response to the covid 19 pandemic, Parliament passed the Coronavirus Act 2020, Section 78 of which authorised the making of regulations providing for the holding of remote meetings. Such regulations (the ‘Flexibility Regulations’) were issued on 1 April 2020 but were time limited until 7 May 2021. They were not extended despite the continuing effect of the pandemic on public health. Judicial Review proceedings were issued against the Secretary of State for Housing, Communities and Local Government by Hertfordshire County Council and other parties seeking judicial clarification of whether the 1972 Act would in effect permit remote meetings in England when the Flexibility Regulations ceased to have effect. The court’s judgement was handed down on 28 April 2021 and held that they did not. In doing so it concluded that ‘once the Flexibility Regulations cease to apply, such meetings must take place at a single, specified geographical location; attending a meeting at such a location means physically going to it; and being ‘present’ at such a meeting involves physical presence at that location’. The court also held in an addendum judgement that references to a meeting being ‘open to the public’ in the 1972 Act meant physical attendance by the public.

It is against this backdrop that the current meeting arrangements, as set out in this report were approved by council on 28 April 2021. The council’s decision had due regard to its overarching statutory responsibilities under Health and Safety Legislation and the Common Law duty of care towards councillors, officers and the public as well as Public Health Guidance in response to the Pandemic.

The Borough Solicitor is satisfied that neither executive nor non-executive meeting arrangements infringe the requirements set out in the 1972 Act. The council’s constitution has always provided for single member decision making in relation to executive decisions and the current arrangements are an extension of this. Moreover, by holding advisory meetings of the executive (with public access and advance publication of agendas and reports) from which an executive portfolio holder can receive recommendations, the council is ensuring transparency of process in its decision making. In respect of non-executive decisions of the council and committees, the council is able to adopt similar processes by applying constitutional flexibilities.

It should be noted that in exceptional circumstances where decisions are reserved to council by law, the current arrangements will need to be set aside and a quorate in person meeting of the council held. A notable example is the council’s statutory duties in relation to budget setting under S67 of the Local Government Finance Act 1992.

Financial Advice

- 6.2 There are no additional revenue implications arising from the above recommendations.

Other Consultation Responses

- 6.3 None

Equalities Impact Assessment

- 6.4 Not relevant to this report.

Strategic Risk Management Issues

- 6.5 It is critical for robust arrangements to be in place for the council to conduct its business without procedural challenge. The current and proposed meeting arrangements satisfy this requirement.

Climate Change Implications

- 6.6 As more councillors and officers attend meetings in Time Square there will be an impact on emissions of CO₂. The current arrangements have reduced emissions as the council's green footprint was lowered due to no travel to meeting venues and reduced lighting and heating. The impact of the proposals will be minimised if most meetings continue to be held remotely.

Background Papers

None

Contact for further information

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