

GOOD PRACTICE GUIDANCE NOTE

DM Decision Making + COVID-19

How to manage committee decisions during the
Coronavirus Emergency

Planning Officers Society

POS is the single credible voice for public sector planners, pursuing good quality and effective planning practice. The Society's aim is to ensure that planning makes a major contribution to achieving sustainable development in ways that are fair and equitable and achieve the social, economic and environmental aspirations of the community.

We operate in three main ways:

- As a support network for planners in the public sector
- As promoters of best practise in planning
- As a think tank and lobbying organisation for excellence in planning practice

Where we can, we will work across the sector to craft proposals that have widespread support from the people who operate the planning system at the coalface: landowners, developers, agents, legal, local authorities and politicians. We will be both radical and practical as we look for solutions to tangible problems that will make a real difference to crucial areas. Our objective is to improve the planning system to enable it to deliver its key aim of sustainable development. It is within this context that we have published this guidance so our members can improve what they do.

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Published: March 2020

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1 Introduction

- 1.1 With the current COVID-19 restrictions, planning committees have been cancelled. This position is likely to persist for some time so not determining those applications until the pandemic is over is not really an option. MHCLG's Chief Planner, Steve Quartermain, in his recent letter has also urged the sector to keep the planning system operating as much as we can in these difficult times.
- 1.2 This guidance note looks at what DM services can do to deal with decisions on planning applications that would ordinarily be taken by committee. Our advice is to reduce the number of cases going to committee as these take up resources that will dwindle as the pandemic takes further hold on the population. This means an increase in applications being determined under delegated powers but those cases that usually would have gone to committee probably need a different delegated procedure to normal to recognise the change. We set out an approach to achieving that. New Regulations from government will shortly allow virtual committees to be held. Advice on how to make these work is also included.

2 New Delegated Procedures

- 2.1 We are awaiting Regulations to allow remote committees, which has been legislated for in the Coronavirus Act 2020. However, we must be conscious of the fact that the resources we will have at our disposal (ie people) to service these new virtual committees are like to reduce significantly over the coming weeks and months. We therefore need to think about what needs to be subject to any new committee "meeting" process and what can be dealt with through an emergency delegated procedure.
- 2.2 This guidance is written on the basis that Councils will take the sensible decision that major or strategic applications (however you define them locally) will continue to go to committee, but the small stuff (householders and minor applications) should now be determined through a delegated process using the emergency procedures. These procedures should not be the same as the usual operation of delegated powers but seek to be a hybrid of the two procedures given the extraordinary circumstances.

Powers

- 2.3 Council constitutions will have emergency powers within them which generally enables the Chief Executive to take any decisions that are necessary in an emergency to keep the Council functioning. Setting up new emergency delegated decision making procedures (and altering SCIs without consultation where this might be necessary) will come within these powers.

Principles

- 2.4 These procedures have been drawn up using the following principles:
- They should mirror existing committee processes where that is sensible.
 - They should be as efficient as possible given the strain that will be placed on staffing levels over the coming months.
 - They should be as precise as possible to minimise the risk of challenge, legal or otherwise.
 - You should maintain a separation between the planning officer administrating the process (in this note we suggest the Head of DM, but it could be a team leader) and the officer taking the decision, which in the circumstances should be the Head of Planning. You will of course need deputising arrangements.

Participation

- 2.5 A committee process obviously involves the members on the committee, but it also involves the community generally and the applicant.
- 2.6 Planning committee councillors should be involved in the new process, but it must be made clear that their involvement now is as consultees and not decision makers. There is a general public administration principle at play here, which is a decision maker to whom the decision has been delegated to cannot be fettered in making their decision. The planner making the decision will take into account the views of the committee members on the report and recommendation but must be free to use their own professional judgement on the merits and planning balance.
- 2.7 Involving the community generally is a more nuanced decision. They would have already expressed views on the development, and these will be in the report and would have been considered in arriving at the recommendation. When further comments are received (reported to committee in update reports) they largely repeat what has already been said. It is only very occasionally that something new and significant is raised. The other side of the coin is that this is a different delegated process. It is one that has been drawn up in the context of an unprecedented global emergency and needs to be as resource light as possible. It's finely balanced, but we would recommend that you do not formally involve the public in the process by specifically notifying them about cases that are proposed for decision (which would be a separate task requiring additional resources). The new process should of course be well publicised and, as will be set out below, the applications should be dealt with in batches (akin to an agenda) and these should be published in the Forward Plan and uploaded to an appropriate new part of your website. Such an approach achieves sufficient levels of transparency and openness but also recognises that it is a new delegated process in which the public are not involved like they were involved in a committee process. Letters and emails that publicise planning applications (and other forms of communication) should make these points clear: that the notification and publicity stage is the only opportunity to comment on a planning application so the public should make sure that they tell the planning service everything they want them to take into account. Whilst mentioning notification emails/letters, don't forget to update these in the context of any new ways of working, such as Council offices being closed.

- 2.8 With respect to the applicant, generally there should be good dialogue between a case officer and an applicant/agent, so no additional provision should be necessary under these new procedures.

Process

- 2.9 We suggest that the stages of a new emergency delegated process should be as follows:

- Officers should communicate with their committee chairs (as now) in advance of “delegated meetings” so that they are aware what matters are coming up for decision.
- Reports should be prepared in the normal way using the existing committee report template.
- In addition, illustrative material should be prepared which mirrors the material that would normally be presented to committee – photos, plans etc.
- An “agenda” pack (front sheet, reports and supporting information) should be prepared which we recommend that you call “Notification of Planning Matters for Emergency Decision Making” to distinguish the process. An example front sheet is drafted in Appendix A.
- The Notification report pack should be sent by the Planning Service to Democratic Services for them to:
 - enter the proposed decisions on the Forward Plan (for transparency purposes); and
 - publish the Notification report pack on the Council’s website.
- On the same day, the Notification report pack should be emailed to the Member Consultees (see Notification front sheet) by the Planning Service. The email should cover the following:
 - set out the deadline by which they must comment – this should be 5 clear working days from the date it was sent to mirror the timings with committee agendas;
 - offer the opportunity to discuss any reports, but make it clear that the comments to be taken into account must be in writing for transparency and probity purposes; and
 - it is also a wise precaution to require members to respond to the email using their council email account.
- After the consultation period has expired, the senior planner administering the process should prepare a draft Decision Record (akin to a committee minute). An example of this is set out at Appendix B.
- The Decision Record should be finalised and signed by the decision maker (the Chief Planner or the nominated deputy) who will take into account any views received from the Member Consultees.
- The finalised and signed Decision Record should be sent by the Planning Service to Democratic Services so they can update the Forward Plan and published the Decision Record on the Council’s website.
- Everyone who responded to the application should be notified of the decision(s) in the normal way by the Planning Service.
- Decisions can be progressed/issued as appropriate.

3 Remote Planning Committees

- 3.1 Holding committees remotely is currently unlawful and MHCLG has legislated to facilitate this but, at the time of writing, the detailed Regulations have not yet been published. Whilst we are waiting for this it's worth thinking about the practicalities of how a conference-call or video-link type committee might work. It is also important to remember that the officers we will have at our disposal to administer any new committee arrangements will reduce (possibly significantly) so we need to be realistic about what new processes we can put in place; they must to be as efficient as possible.
- 3.2 We need to look at the practicalities of this from three different aspects:
- The meeting itself
 - Public speaking
 - Public attendance
- 3.3 Authorising the arrangements for any changes that are made to committee procedures should be capable of decision by the Chief Executive via the emergency provisions that are in most Constitutions.

The meeting itself

- 3.4 Having a conference-call or video-link meeting is relatively easy to organise. The challenge is managing a large group of people. With probably 15 to 20 members and officers in attendance with your current arrangements, it is worth considering reducing the size of the committee to make it more manageable. Officer attendance should be kept to a minimum. The number of members should also be reduced to the minimum necessary to maintain political balance. This would help the chair to manage the meeting more effectively.
- 3.5 As the meeting will probably be listened to and not viewed by the public (especially if it's a conference call) it will be important to have clear protocols so that people don't speak over each other and that they introduce themselves, so listeners know what is happening. The role of the chair will be even more important than usual.
- 3.6 Arrangements will be necessary for handling visual material, but this should be relatively straightforward. They can be distributed in advance as PowerPoint or PDF packs and referred to in the meeting. Some video conferencing facilities will enable such material to be displayed during the virtual meeting, but you must be sure all participants can do so – a simpler solution may be more resilient.
- 3.7 Finally it will be very important to remind members of the rules that apply to the normal operation of a committee, in particular that they are incommunicado including via electronic means.

Public speaking

- 3.8 Allowing any public speakers to join a virtual meeting is likely to challenge the technology. An alternative solution would be to ask speakers to record their speech (as an MP3 file) and email it to officers in advance of the meeting. This is likely to be better for most people as they can have several attempts at it until they are happy it is right – and under the normal time limit. The only potential downside is there would be no ability to ask questions, but that should rarely be necessary. You could make arrangements for speakers to supply their phone numbers and to be on standby so that any really necessary questions could be done through a phone call. Once it is clear that they will not be needed they can be sent a text to that effect.

Public attendance

- 3.9 It is important to remember that it is a meeting in public and not a public meeting. The public are there to listen and that is all. Cheering, booing, clapping and other forms of “participation” are all against the rules and shouldn’t really happen anyway! Accordingly, the public are in effect witnesses to the process. Involving them “live” in a virtual meeting would be impracticable if not impossible. If a live webcast can be facilitated then fine, but as an alternative a recording should be made of the virtual meeting which is then uploaded ASAP to the Council’s website. Such an approach should cover this element of the process adequately and not prejudice any party.

4 Conclusions

- 4.1 It is hoped that this guidance note assists in making decisions around these issues in these challenging times. It is essential to design new procedures that are as simple as possible and do not rely on complex technology arrangements. Broadband capacity is already under strain, so telephony may be more resilient. It is also important to remember that the human resources we have to service new arrangements will diminish and possibly do so significantly, so keep it as simple as possible.
- 4.2 Your new procedures should be kept under review in the light of the continuing COVID-19 emergency.

APPENDIX A: Notification Front Sheet

[NAME OF COUNCIL]

NOTIFICATION of planning matters for emergency decision making
under [state the power in the Constitution being used]

This Notification has been published in the Forward Plan and is available on the Council's website

Date published: XX Xxxx 2020

For enquiries about this Notification, please contact [name of senior planner administering the process (phone number and email address)]

Delegated decision(s) to be taken by the [Chief Planning Officer] under the emergency decision making procedures for planning matters normally determined by [Planning Committee].

Consultation undertaken with the following Councillors:

- [Councillor A]
- [Councillor B]
- [etc]

Any views to be sent by email to [name of senior planner administering the process] by 5pm on [ie 5 clear working days after the publication of this document].

Items for decision:

- a) [Ref No – Address]
- b) [etc]

Background documents

For information about the background papers used in the drafting of the reports in this Notification contact [name of senior planner administering the process (phone number and email address)].

APPENDIX B: Decision Record

[NAME OF COUNCIL]

DECISION RECORD of emergency decision making on planning matters
under [state the power in the Constitution being used]

Date: XX Xxxx 2020

Delegated decision(s) taken by the [Chief Planning Officer] under the emergency decision making procedures for planning matters normally determined by [Planning Committee].

Consultation was undertaken with the following Councillors:

- [Councillor A]
- [Councillor B]
- [etc]

Record of decision(s):

- a) [Ref No]
[Address]
[Description of Development]

DELEGATED PROCEDURE CONSULTATIONS

[There were no further views expressed by Councillors on this report.] [The following views were expressed by Councillors on this report:]

- [NAME OF COUNCILLOR]: [summary of views expressed]
OFFICER COMMENT: [clearly identify any views that are not material planning considerations or where there are any erroneous applications of planning law or policy]
- [etc for any other Councillor comments]

FURTHER OFFICER CONSIDERATIONS

[In this section the administering senior officer will pull together the further material planning considerations raised by the comments that have been made by members and make a recommendation that is either to go with the recommendation unaltered, to amend the recommendation (eg altering or adding a condition) or to propose a new recommendation (eg to refuse rather than grant)]

DECISION

[In this section the decision will be set out – this will be in the form normally adopted in committee minutes rather than repeating the whole decision as set out in the main report]

- b) [etc for any other reports on the Notification]

Signed _____

Date _____

Title: [Chief Planning Officer]