

Report No.
CSD20059

London Borough of Bromley

PART ONE - PUBLIC

Decision Maker: URGENCY COMMITTEE/EXECUTIVE

Date: 19th March 2020

Decision Type: Urgent Non-Executive & Non-Key
Executive

Title: DECISION MAKING ARRANGEMENTS DURING CORONAVIRUS DELAY PHASE

Contact Officer: Mark Bowen – Director of Corporate Services

Chief Officer: Mark Bowen – Director of Corporate Services

Ward: All

1. Reason for report

- 1.1 During the Coronavirus pandemic Local authorities are being asked to consider how they hold meetings and make decisions. Whilst at the time of writing there is not a prohibition on local authority meetings being held that could change. There is also a framework of Public Health England requiring us to lead by example through considering alternative decision making arrangements and not holding meetings unless they are necessary.
- 1.2 By making the changes contained in the report whilst the present situation continues the most decision making can take place whilst preserving democratic accountability.
-

2. RECOMMENDATIONS

The Urgency committee agree:

- 2.1 That all Committee Chairmen review whether meetings are needed and whether items under consideration can be deferred; where meetings are not required that the relevant Chairman requests cancellation of the meeting.
- 2.2 That where meetings are required that wherever possible then the minimum quorum of members attends - any quorum to include a majority of Members from the Majority Group.
- 2.3 That all Policy Development and Scrutiny meetings are suspended until the new Municipal year but that written or virtual scrutiny of Executive and Portfolio Holder decisions continue to be co-ordinated by the relevant PDS Chairman.

- 2.4 That rules on public questions are varied for the duration of the Municipal Year to only allow for written questions.**
- 2.5 That all planning decisions which cannot be deferred are delegated to the Assistant Director Development Control and Planning but only where a majority of members of the committee or sub-committee who would have made the decision support the proposed recommendation.**
- 2.6 That the limit on supplementary estimates of £1m by the Executive is removed for the remainder of the Municipal Year, where it is not possible to hold a meeting of Council, the Mayor agreeing the matter cannot be deferred and the Leader taking the decision on the expenditure.**
- 2.7 That The Contract Procedure rules be varied for the remainder of the Municipal Year to allow the Leader to award contracts of over £1m without calling a meeting of the Executive and subject to written pre-decision scrutiny as set out in recommendation 2.9.**

The Executive is asked to agree -

- 2.8 That the Leader considers whether Executive decisions which are scheduled to be made by the Executive can be deferred.**
- 2.9 In addition to Executive decision making arrangements presently permitted by the Constitution, Executive decisions which the Leader considers cannot be deferred are made either by the Leader or the relevant Portfolio Holder for the remainder of the Municipal Year and that decisions taken by the leader or a Portfolio Holders are subject to virtual or written pre-decision scrutiny.**
- 2.10 That all matters presently reserved to the full Executive in Part 3 of the constitution and where relaxations are granted by recommendations 2.6 & 2.7 are taken by the Leader**
- 2.11 The Chief Executive to undertake expenditure which in his opinion is urgently required to protect the Council, its members, staff and residents during the Coronavirus outbreak to a maximum of £100k with the agreement of the Leader.**

Impact on Vulnerable Adults and Children

1. Summary of Impact: Not Applicable
-

Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Excellent Council
-

Financial

1. Cost of Proposal: None
 2. Budget Head / Performance Centre: Democratic Representation
 3. Total current budget for this head: £1,087,810
 4. Source of funding: Revenue Budget
-

Personnel

1. Number of staff (current and additional): Not Applicable
 2. If from existing staff resources, number of staff hours: Not Applicable
-

Legal

1. Legal Requirement: Local Government Acts 1972 and 2000 and related legislation and regulations
 2. Call-in: Call-in is applicable.
-

Procurement

1. Summary of Procurement Implications: Not Applicable
-

Customer Impact

1. Not Applicable
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments: Not Applicable

3. COMMENTARY

Coronavirus - Communicating about public events and council meetings

3.1 At present there is not a prohibition on Local Authority meetings taking place. However it is important that all local authorities follow and are seen to follow public health guidance on public events, including council meetings. At present Public Health England does not advise cancelling public events due to the Coronavirus outbreak. There may however be reasons to cancel public events which are coronavirus related. For example, it may be prudent to reprioritise to ensure that resources are focussed on meeting the challenge of coronavirus and therefore choose to rationalise your council meeting structure. In addition we are advised that we

, "... may also want to focus your effort on public events that will have particular value to your community in these difficult times. More practically you may need to cancel public events due to older people being excluded from a consultation exercise and more so if over 70's self-isolate in coming weeks because they are following public health advice; or illness or self-isolation on the part of key speakers; or reduced audiences which might render an event unsustainable."

3.2 When communicating about an event during the coronavirus outbreak we are advised to ensure that we include the key message about the Public Health England advice and to ensure that any cancellation is explained clearly in terms of the practical circumstances that have led to its cancellation set out above.

3.3 The Chief Medical Officer has signalled that he may choose to issue further advice on public events, and he is keeping this under regular review. This approach is recommended to local authorities.

3.4 Where an agenda has been published, if a meeting needs to be cancelled or postponed the Chief Executive is authorised to do so in exceptional or unforeseen circumstances at the request of the Mayor, Chairman Leader or Portfolio Holder as appropriate by virtue of Council procedure Rule 7.2 This Rule applies to the present situation.

Local Authority Decision Making Rules

3.5 Local authorities are statutory corporations. What they can and can't do is regulated by statute. This applies to how decisions are made and who can make those decisions.

3.6 Bromley operates the Leader and Cabinet executive arrangements under the provisions of the Local Government Act 2000. The Executive at Bromley comprises the Leader and 6 Executive Portfolio Holders

3.7 This means that all functions of the Council are Executive side decisions unless there is a legal provision which states the decision needs to be taken by another part of the council – an example relates to most planning and licencing decisions.

3.8 As well as the statutory framework for decision making Bromley has adopted a Constitution which sets local rules for decision making and includes a scheme of delegation.

3.9 The Council can change its local rules but cannot override the statutory framework and this is an aspect specifically excluded from the power of competence in the Localism Act 2011.

3.10 Many of the legislative rules we work to were introduced 30-40 years ago and focus on full Council and committees making decisions in public at a pre-advertised location where only

Councillors who are present can speak and vote. The government has recognised the issues this could cause in the present circumstances and the Secretary of State and among other measures is considering passing emergency legislation to allow for local authority meetings to be held virtually for a temporary period.

- 3.11 However, there is no time line indicated or draft legislation available at present. Therefore as there are some potential alternatives to conventional local authority meetings which will allow lawful decisions to take place whilst preserving democratic accountability. Arrangements need to be put in place now which can be reviewed in the light of new legislation.
- 3.12 The appendix to the report sets out the meetings scheduled to be held for the remainder of the Municipal Year.

Executive Decision Making

- 3.13 The majority of Local Authority decisions at Bromley are Executive decisions .
- 3.14 Executive decision making arrangements are mainly governed by the Localism Government act 2000 and The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.
- 3.15 Part 3 of the Constitution sets out the arrangements for Executive decision making at Bromley. This is supplemented by the Scheme of Delegation to officers.
- 3.16 Under the regulations there is a requirement that all meetings of “a decision-making body” are to be held in public unless an exception applies. A “decision-making body” under the regulations includes: a local authority’s executive and its committees and sub-committees; joint committees where all the members are members of a local authority executive; sub-committees of such joint committees, and area committees of local authority executives.
- 3.17 Bromley has tended not to use Executive, sub-committees and area committees.
- 3.18 There are some exemptions which allow for Executive meetings to be held in private but apply only to matters such as personal information, commercially sensitive information, legal advice and the like. They do not cover the present situation.
- 3.19 There is an obligation for decision-making bodies to give at least five clear days’ notice of the time and place of a public meeting unless the meeting is convened at shorter notice. If a meeting is convened at shorter notice, the notice of the time and place must be given at the time that the meeting is convened. Unfortunately, virtual meetings are not permitted
- 3.20 These provisions can only be relaxed by changes to the regulations.
- 3.21 Whilst this may happen it is also prudent to look at any flexibility which allows Executive decisions to continue to be made where it is either not possible or imprudent to hold a public meeting under the regulations.
- 3.22 Section 9 E of the Local Government Act 2000 sets out how and by whom Executive functions can be discharged. The key provision is Section 9 E (2) which provides that

2) The senior executive member—

- (a) may discharge any of those functions, or*
- (b) may arrange for the discharge of any of those functions—*
 - (i) by the executive,*
 - (ii) by another member of the executive,*
 - (iii) by a committee of the executive,*
 - (iv) by an area committee, or*
 - (v) by an officer of the authority*

3.23 The senior executive member is the Leader.

3.24 Where the Leader has delegated a function then unless he directs otherwise sub-delegation is permitted.

3.25 Where an Executive function is taken by the Leader and delegated to an individual portfolio holder, then whilst certain rules on publicising key decisions and recording decision apply there is no need to hold a publically advertised meeting. This also is the case for Executive functions delegated to Officers.

3.26 Paragraph 7.06 in Article 7 of Part 2 of the Constitution covers allocation of Executive functions. As making arrangements for Executive decision making is vested in the Leader they can be varied by the Leader. In the present circumstances the Leader can agree that, so far as allowed by law, all Executive functions can until further notice be exercised individually by the Leader himself, a portfolio holder or an officer without the need for a meeting of the Executive. This would include matters reserved to the full Executive in Part 3 of the Constitution Requirements for consolation/agreement are set out later in this report.

As is outlined above the Council has also placed constraints on the power of the Executive to make decisions.

3.27 Four main areas where this occurs are.

1. Requirements for pre decision scrutiny generally and of pPortfolio holders before they make individual decisions.
2. Thresholds in Contract Procedure Rules set by Council.
- 3 Limits on supplementary budget estimates.
- 4 Executive decisions which do not comply with the budget or certain polices identified in Article 2 of Part 2 of the Constitution.

There are alternative approaches available.

1. Requirements for pre decision scrutiny generally and of the Leader/ Portfolio Holders before they make individual decisions.

These are local rules. There is no need for pre-decision scrutiny of the majority of Executive decisions (exceptions being the budget and certain strategic polices). The Leader and Portfolio

Holders under the national legal framework can make individual decisions without pre-decision scrutiny and without having to call public meetings..

Appendix 3 of the Executive Procedure Rules sets out areas where the presumption is that Portfolio holders can make decisions without pre-decision scrutiny at a PDS meeting and allows that to be extended where there isn't an objection from any member of the relevant PDS committee.

Therefore it is in the present circumstances it could be considered a proportionate response to move to "virtual" scrutiny of Executive decisions which will be taken by the Leader and Portfolio Holders. Written reports would still be circulated for comment and views from members could be expressed. These could either be sent directly or co-ordinated by the relevant PDS Chairman. This could include the Leader or a Portfolio Holder discussing prospective decisions with all; Members of a relevant PDS Committee through a conference call or other virtual means of engagement.

2. Thresholds in Contract Procedure Rules set by Council.

Contract Procedure Rule 3.2 also covers award of contracts in exceptional circumstances which will apply to many contracts in the present circumstances

Where there is the need to *Waive* the requirements for Competitive *Bids* pursuant to Rule 13.1 or any other provision of these Contract Procurement Rules because of an unforeseeable emergency involving immediate risk to persons or property or serious disruption to Council services or significant damage or potential damage to the image or reputation of the Council (including circumstances which require a *Head of Service* to invoke a *Business Continuity Plan*), a *Chief Officer* may exercise such *Exemption* or *Waiver* subject to the following:

- (i) Where the value of a relevant contract (or proposed contract) exceeds **£50,000** the Agreement of the *Director of Corporate Services* shall be obtained.
- (ii) Where the value of a relevant contract (or proposed contract) exceeds **£100,000** the Agreement of the *Director of Corporate Services*, the *Director of Finance* and the Agreement of the relevant *Portfolio Holder* shall be obtained. A report advising on the action taken shall be submitted to the *Audit Sub Committee* on a bi-annual basis.
- (iii) Where the value of a relevant contract (or proposed contract) exceeds **£1,000,000** the Agreement of the *Director of Corporate Services*, the *Director of Finance* and the Agreement of the relevant *Portfolio Holder* shall be obtained. A report advising on the action taken shall be submitted to the next meeting of the *Executive* and to the *Audit Sub Committee* on a bi-annual basis

The above provision can be used to extend contracts .

Where the Rule doesn't apply Contract awards over £1m are reserved to the Executive under the Council's Procurement Rules. Council can vary/increase as necessary for the duration of the present situation. It may be prudent to authorise the Leader to take decisions on behalf of the Executive on the award of contracts over £1m. This would be subject to the virtual. Scrutiny as outlined in the previous section and consultation by the Leader with the Executive.

3. Limits on supplementary budget estimates and general expenditure.

The Council's financial regulations limit supplementary budget estimates to £1m. This could be waived for the duration of the situation and again Council can agree to authorise the Leader after appropriate virtual scrutiny/consultation to agree supplementary estimates to a higher threshold than the present £1m.

The Council may also need to incur expenditure urgently from funds made available to deal with the Coronavirus outbreak or as a part of a general response. Authorising the Chief Executive to incur expenditure up to £100k with the agreement of the Leader

4. Executive decisions which do not comply with the budget or certain policies identified in Article 2 of Part 2 of the Constitution

The Budget and policy framework rules in the Constitution permit urgent decision to be taken outside the budget and policy framework. Where it is not practicable to convene a meeting of full Council and the Chairman of the relevant PDS committee agrees the decision is a matter of urgency.

Decisions need to be reported to the next available Council meeting. Given the present situation it is considered that the above circumstances apply and no change is required..

Policy Development and Scrutiny Meetings

- 3.28 A Council must have at least one PDS Committee. However, save for needing to meet once a year as a Crime and Disorder PDS committee and the need to consider certain aspects of the budget, there aren't mandatory statutory requirements on how often Policy Development and Scrutiny committees should meet.
- 3.29 There is local discretion on how pre-decision scrutiny operates and the recommendations in the previous section will allow for a degree of pre-decision scrutiny without the need for meetings. It is essential that there continues to be ongoing engagement between the Executive and the Scrutiny process. However, prior notice of decisions and collective consultation or consideration of comments from individual Councillors with decision reports identifying how these have been taken into account by the decision makers will support transparent and accountable decision making.
- 3.30 Scrutiny arrangements are also required to include provision for call-in of Executive decisions. If a matter is urgent then call-in will not apply in any event. Therefore as many decisions taken will be urgent and as many non-urgent controversial decisions may be subject to call-in can be deferred no changes are proposed to call-in arrangements.

Council and Council Committee Decisions.

- 3.31 As is covered above, legislation does not allow for virtual Council meetings or virtual meetings of Council committees and sub-committees. Until the legislation is passed Members need to be present at a pre-advertised venue to take a formal part in a meeting and vote . However they can still participate and express views on matters under consideration even if not physically present. Neither do officers need to be physically present to advise
- 3.32 Certain Council functions e.g. appointing the Mayor and committees, approving the budget signing off the accounts and agreeing key policy documents such as the local plan are reserved solely to full Council. It is understood that Government will extend the accounting sign off until

30 September 2020^{3.33} Legally, there needs to be an annual meeting. The annual meeting is scheduled for early May and in a year when there aren't local elections the Annual Meeting must be held before the end of May.

3.34 Government is considering legislating to allow the Annual Meeting which appoints the Mayor and Committees to be a virtual meeting..

3.35 As with Executive functions Council can delegate other functions. Section 101 of the Local Government Act 1972 provides

101 Arrangements for discharge of functions by local authorities.

(1) Subject to any express provision contained in this Act or any Act passed after this Act, a local authority may arrange for the discharge of any of their functions—

(a) by a committee, a sub-committee or an officer of the authority; or

(b) by any other local authority

3.36 The key difference is that it is not lawful to delegate making non-executive decisions to an individual Councillor. 3.37 Neither is it lawful to delegate to Officers functions reserved in law to full Council. There are also other matters which are reserved to members and cannot be delegated e.g. licensing decisions where there has been an objection.

3.38 Therefore, if it is not possible to hold formal meetings and if government does not legislate to permit virtual meetings individual decision making would need to be delegated to an officer subject to any safeguards requiring consultation with or agreement from members to make decisions.

3.39 The main non-executive decision making bodies are the General Purposes and Licensing Committee and its sub-committees and Development Control Committee and the Plans Sub-Committees.

3.40 There is one scheduled meeting of the main General Purposes and Licensing Committee due to be held this Municipal Year. There are not any decisions scheduled which cannot be deferred.

3.41 There is one provisional meeting of the Licensing Sub-Committee where decision can only be taken by members in that forum and if the matter cannot be deferred and the law isn't relaxed then consideration will need to be given to proceeding using best practice on hygiene and social distancing

3.42 Development Control Committee and Plans Sub-Committees present more of a challenge. These meetings are well attended by the public and decisions will sometimes be sensitive and /or controversial and it will not always be possible to defer decisions.

3.43 Planning decisions cannot lawfully be delegated to a single Member. As long as there is no prohibition on meetings taking place it may be possible to hold meetings using best practice on hygiene/social distancing. Another option may be to hold meetings which meet the bare quorum requirements which will be 1/3rd of the membership of the relevant body.

3.44 An alternative may be to delegate all planning decisions which cannot be deferred to the Assistant Director, Development Control and Planning with additional safeguards for matters not presently delegated. These could include a report being prepared and published and matters still being notionally allocated to either Development Control Committee or a Plans Sub Committee with the Assistant Director only being able to grant or refuse permission if the majority of the committee/sub-committee agree with his proposed decision. The Assistant Director could also undertake a virtual consultation with all members of the Committee or Sub-committee.

Working Groups and other meetings not regulated by the 1972/2000 Acts or 2012 Regulations

3.45 Members and officers also attend a range of business and other meetings not covered by the above legislation. There is nothing to prevent us holding virtual meetings for working group meetings and Chairman`s call-over meetings.

Conclusion

3.46 There are few Executive decisions which legally require formal meetings. The minor constitutional changes outlined above will allow individual member or officer decision making to take place. Safeguards on advance publication of reports and opportunities for consultation and virtual scrutiny can protect the integrity and transparency of the decision making process.

3.47 Scrutiny meetings need not go ahead and virtual consultation/engagement is possible.

3.48 Virtual meetings of Council and council side committees are not permitted under the existing legal framework. Neither is delegation to a single member. If it is not possible to hold formal meetings then unless government legislates to allow for different decision making arrangements decisions which needed to be made would need to be delegated to officers with appropriate safeguards being built in.

Appendix 1 – List of Meetings

Thursday 19 March 2020
10.00 am Safer Bromley Partnership Strategic Group - Bromley Civic Centre - CANCELLED
1.30 pm - Health and Wellbeing Board - Bromley Civic Centre - CANCELLED
7.00 pm Plans Sub-Committee No. 3 - Bromley Civic Centre
Tuesday 24 March 2020
<u>2.00 pm - PROVISIONAL - Licensing Sub-Committee - Bromley Civic Centre</u>
<u>7.00 pm - Adult Care and Health Policy Development and Scrutiny Committee - Bromley Civic Centre - CANCELLED</u>
Wednesday 25 March 2020
<u>7.00 pm Renewal, Recreation and Housing Policy Development and Scrutiny Committee - Bromley Civic Centre</u>
Thursday 26 March 2020
<u>7.00 pm - Executive, Resources and Contracts Policy Development and Scrutiny Committee - Bromley Civic Centre</u>
Tuesday 31 March 2020
<u>4.00 pm Bromley Economic Partnership - St Mark's Square, Bromley South</u>
<u>7.00 pm - Public Protection and Enforcement Policy Development & Scrutiny Committee - Bromley Civic Centre</u>
Wednesday 1 April 2020
<u>7.00 pm Executive - Bromley Civic Centre</u>
Thursday 2 April 2020
<u>7.00 pm Plans Sub-Committee No. 4 - Bromley Civic Centre</u>
Tuesday 7 April 2020
<u>7.00 pm General Purposes and Licensing Committee - Bromley Civic Centre</u>
Wednesday 8 April 2020
<u>10.00 am PROVISIONAL - Licensing Sub-Committee - Bromley Civic Centre</u>
Tuesday 14 April 2020
<u>7.00 pm - Rights of Way Sub-Committee - Bromley Civic Centre</u>
Thursday 16 April 2020
<u>7.00 pm Plans Sub-Committee No. 1 - Bromley Civic Centre</u>

Wednesday 22 April 2020
<u>6.30 pm - Local Joint Consultative Committee - Bromley Civic Centre</u>
Thursday 23 April 2020
<u>4.00 pm Health Scrutiny Sub-Committee - Bromley Civic Centre</u>
Monday 27 April 2020
<u>7.00 pm - Council - Bromley Civic Centre</u>
Thursday 30 April 2020
<u>1.30 pm Health and Wellbeing Board - Bromley Civic Centre</u>
<u>7.00 pm Plans Sub-Committee No. 2 - Bromley Civic Centre</u>
Tuesday 12 May 2020
<u>2.00 pm PROVISIONAL - Licensing Sub-Committee - Bromley Civic Centre</u>
<u>7.00 pm - Pensions Investment Sub-Committee - Bromley Civic Centre</u>
Wednesday 13 May 2020
<u>6.30 pm - Annual Meeting, Council - Bromley Civic Centre</u>
Thursday 14 May 2020
<u>7.00 pm Plans Sub-Committee No. 3 - Bromley Civic Centre</u>
Monday 18 May 2020
<u>7.00 pm - Executive, Resources and Contracts Policy Development and Scrutiny Committee - Bromley Civic Centre</u>
<u>7.00 pm General Purposes and Licensing Committee - Bromley Civic Centre</u>
Tuesday 19 May 2020
<u>7.00 pm Executive - Bromley Civic Centre</u>
Wednesday 20 May 2020
<u>7.00 pm Special Meeting, Council - Bromley Civic Centre</u>
Thursday 21 May 2020
<u>7.30 pm Development Control Committee - Bromley Civic Centre</u>
Thursday 28 May 2020
<u>7.00 pm Plans Sub-Committee No. 4 - Bromley Civic Centre</u>