

Decision Maker: GENERAL PURPOSES AND LICENSING COMMITTEE

Date: 6 July 2021

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

Title: RETURN TO PHYSICAL MEETINGS

Contact Officer: Graham Walton, Democratic Services Manager
Tel 020 8461 7743 E-mail: graham.walton@bromley.gov.uk

Chief Officer: Mark Bowen, Director of Corporate Services

Ward: All Wards

1. Reason for report

- 1.1 The regulations which permitted virtual meetings expired on 7th May 2021 and Members need to consider for arrangements for meetings until the lockdown restrictions are lifted and beyond.

2. RECOMMENDATIONS

Members views are sought on -

- (1) Whether they wish to reintroduce live-streaming of meetings.
 - (2) The approach to attendance by those who are not members of the committee.

Impact on Vulnerable Adults and Children

1. Summary of Impact: Live streaming of meetings will allow a wider range of people to observe the Council's meetings.
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Corporate Policy

1. Policy Status: New Policy:
 2. BBB Priority: Excellent Council:
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Financial

1. Cost of proposal: Estimated Cost: Up to £5k
 2. Ongoing costs: Non-Recurring Cost:
 3. Budget head/performance centre: Democratic Services
 4. Total current budget for this head: £366k
 5. Source of funding: Existing revenue budgets
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Personnel

1. Number of staff (current and additional): 6
 2. If from existing staff resources, number of staff hours: Not Applicable
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Legal

1. Legal Requirement: Non-Statutory - Government Guidance:
 2. Call-in: Not Applicable: Non-executive decisions are not subject to call-in.
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Procurement

1. Summary of Procurement Implications: Not Applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Not Applicable
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: Not Applicable

3. COMMENTARY

- 3.1 In response to the COVID situation the government introduced legislation to allow local authorities to hold virtual meetings. Bromley implemented the regulations and we successfully held virtual meetings which were live-streamed after the meeting of the Urgency Committee in May 2020. The legislation was time-limited and the power to hold virtual meetings lapsed after 7 May 2021. The government, whilst committing to keep the position under review and starting a consultation on virtual meetings, has not extended the power.
- 3.2 The High Court recently heard a case where it was argued that existing legislation was sufficient to allow virtual meetings to continue without a change in the law. That argument was unsuccessful, and we can no longer hold virtual meetings. A key part of the judgment reads:

".... the Secretary of State was correct in November 2016 and July 2019 to say that primary legislation would be required to allow local authority "meetings" under the 1972 Act to take place remotely. In our view, 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 considered whether the requirements to make meetings open to the public could be satisfied just by live-streaming or similar. Again, they held this would not satisfy the law.

- 3.3 The Local Government Minister has advised that now the dispensation on virtual meetings has lapsed local authorities could consider either delegating more to officers or using single Member decision making where possible until the lockdown restrictions are relaxed. The relaxation which took place on 17th May permitted indoor facilities to operate at up to 50% capacity. The Minister has indicated this could apply to local authority meetings. The next proposed relaxation was originally set for 21st June but at the time of publication is now indicated to be 19th July
- 3.4 The Council anticipated that the legal case was unlikely to allow the continuation of virtual meetings. The annual meeting of the Council was moved to 19th May at the Churchill Theatre and the meeting calendar adjusted. The Council Chamber has been laid out and used in a "COVID-safe" way for meetings since 17th May. This can safely accommodate up to 20 Members, 10 supporting officers and visiting members and up to 34 members of the public and press.
- 3.5 The key legislative provisions covering local authority meetings are The Public Bodies (Access to Meetings) Act 1960, The Local Government Act 1972, and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. Any meetings held under these provisions must now be physical meetings. This will cover Council, all Committees and Sub-Committees and the Executive. It also applies to joint arrangements with other Local authorities including joint scrutiny arrangements. It includes the Health and Well Being Board which the Health and Social Care Act 2012 provided is to be treated as if it were a committee appointed under section 102 of the Local Government Act 1972.
- 3.6 The provisions do not apply to pre-meetings, working groups, advisory panels or any meeting which is not called under the above provisions including most partnership bodies.
- 3.7 Taking the Minister's steer, Members may wish to consider whether they want to minimise the need for or amount of business considered at meetings by supporting single member decision making for Executive decisions or delegating any additional non-executive decisions to officers. In both instances oversight could be provided by advisory groups which would replace some or all the work e.g. PDS Committees or Plans Sub-Committees on a temporary basis. Members

will recall this approach for planning decisions before the rules permitting virtual meetings came into force with safeguards preventing decisions which were not supported being taken. These meetings could take place virtually and although there would be no legal obligation to do so they could be broadcast.

- 3.8 A key issue is deciding who must be present at a meeting. Members of the relevant body must be present. Therefore, a member of the body would not be present for attendance purposes or to chair the meeting or vote if they are not physically present. Members can manage attendance by holding meetings which meet the minimum quorum (usually 1/3rd of the members of the body.) The Council Chamber can accommodate full attendance by Members of the relevant bodies except for full Council.
- 3.9 However, visiting members and officers are not a part of the committee. A point the Court did not obviously address is if a physical meeting takes place whether those who are not part of the relevant body can make remote contributions. This is something that has previously happened from time to time by telephone and regularly in writing. It is arguably the position that where contributions are made by those not present the meeting is still taking place in a physical venue with those required to make it a quorate meeting being present at that venue. The law is silent on the point, but subject to all those at the venue being able to see/hear the contribution the judgment does not prevent the practice continuing. It would be illogical if the contrary were true as there is no impediment to a chairman adjourning a meeting to seek advice or a view from someone who is not present and relaying that to the meeting – possibly by showing a recording - so it would appear far better for that to be delivered to the meeting directly.
- 3.10 Any remote contributions would need to be viewed and heard or at least heard by those present including those in the public gallery and screens could be provided at a cost of from c10k including installation which can be met from existing budgets.
- 3.11 Some officer roles when exercising statutory functions may be so closely tied to the meeting itself that attendance would be required, but subject to that Members may agree it is prudent to minimise officer attendance while the present restrictions are in place.
- 3.12 It is also necessary to address attendance by the public. To date, the capacity in the Chamber has been sufficient to accommodate Members, officers and the public. Our meetings are meetings held in public rather than public meetings and even pre-COVID, there was a possibility that the space available would occasionally be insufficient for those wishing to attend. The view taken is that as long as demand had been anticipated and was accommodated, and other support mechanisms were in place, e.g. overflow rooms with live broadcasting when necessary , then reasonable provision had been made.
- 3.13 It merits examining the following paragraph from the Judgment:

"None of this, of course, prevents a local authority from broadcasting or live-streaming some or all of its meetings so as to allow wider public access. But such broadcasting or live-streaming does not, on its own, satisfy the requirement for the meeting to be "open to the public" or "held in public". We say nothing about the numbers of the members of the public who should admitted in person, which will no doubt be subject to current public health or Government guidance. But subject to that practical consideration, or any other legislative intervention, where the requirement for the meeting to be "open to the public" or "held in public" applies, members of the public must be admitted in person as well."

The Court recognised that meetings need to be managed in line with present restrictions and public health advice. This means that numbers at any venue will need to be controlled. The Court did not (as it could have done) say that every person who wishes to attend must be

allowed to do so and it is arguable that as long as a reasonable attempt is made to accommodate demand physically with alternative measures being provided for the rare occasions when capacity may be exceeded, meetings will be within the law.

- 3.14 Government Guidance on the safe use of Council buildings encourages the use of live streaming of meetings until COVID restrictions end. The Council has streamed a meeting of the Executive to manage an anticipated high public attendance (there were over 400 views of that meeting) and in other cases has published audio recordings of some meetings. However to date members of the public wishing to attend have been accommodated and very few requests have been received for live streaming.
- 3.15 There is arguably a difference between the public accessing the meeting on the live-stream or broadcast as observers and those actively participating in the meeting as objectors, applicants, or appellants or to undertake a constitutional right and those individuals as far as possible should attend in person with seating prioritised to permit that.
- 3.16 Broadcasting or live-steaming meetings will support this and is also a legitimate means of managing attendance by allowing those who remain content to watch remotely to continue doing so. It will also provide a useful facility for Members and officers who may wish to view the meeting or make a brief contribution to do so without the need to be physically present

4. FINANCIAL IMPLICATIONS

- 4.1 Options for updating the existing audio facilities in the Council Chamber to enable hybrid meetings and integrate with live-streaming are being explored. A suitable camera and supporting equipment will cost c£5k. Screens could be provided at a cost of c10k including installation. Costs can be met from within existing budgets. Any equipment could be used for other meetings or made available when meeting rooms are hired out when lockdown restrictions are lifted.

Non-Applicable Sections:	Impact on Vulnerable Adults and Children/Policy/Personnel/Legal/Policy/Procurement
Background Documents: (Access via Contact Officer)	High Court Judgement – 28/4/21- Hertfordshire CC, Lawyers in Local Government, The Association of Democratic Services Officers and the Secretary of State for Housing, Communities and Local Government