

North Yorkshire County Council

Report to the Leader

24th March 2020

Decision making during the Coronavirus outbreak

Report of the Assistant Chief Executive (Legal and Democratic Services)

1.0	Purpose of report
1.1	To ask the Leader to endorse the approach undertaken to make sure that appropriate decision making continues for North Yorkshire County Council during the coronavirus pandemic whilst ensuring that the Government's guidance on self-isolation, household isolation and social distancing is followed.

Executive Summary)

2.0 Issues

2.1 Under normal circumstances the County Council will make a number of decisions collectively by Members in meetings and by Individual Executive Members and officers; and provide appropriate scrutiny through the physical attendance of meetings by Councillors and the public. Indeed for a number of years, the law has provided that only Councillors who are physically present at a meeting can count towards its quorum and formally vote at committee meetings.

3.0 Background

3.1 The Government is constantly updating its guidance in ensuring that the Country can appropriately react to the public health threats caused by the Coronavirus pandemic. In order for the County Council to be flexible enough to make the appropriate decisions to provide services to the public, the Council needs to consider revising the operation of its Governance arrangements for the immediate future. It is necessary to put in place arrangements that will allow good decision making to continue, provide public accountability but, just as importantly, to react to changing circumstances so that the Council, the public and Councillors can follow the Government's guidance on self-isolation, household isolation and social distancing. The Government has stated that the guidance seeks to help reduce the spread of the virus and reduce the mounting pressure on the National Health Service. The public have already been asked to make a number of changes to everyday life to avoid unnecessary social contact.

3.2 The County Council therefore need to reduce the number of public meetings and committee meetings over the next few months. On 16th March, Robert Jenrick, Local Government Secretary, has stated that the Government is considering making a number of changes to legislation and guidance which will allow:

- Routine Care Quality Commission inspections will be temporarily suspended for the duration of the COVID-19 outbreak
- Ofsted will look very favourably on any requests to defer inspections because of coronavirus
- Councils will be able to use their discretion on deadlines for Freedom of Information requests
- The deadline for local government financial audits will be extended to 30 September 2020
- It will consider bringing forward legislation to remove the requirement for annual council meetings to take place in person
- It will consider bringing forward legislation to allow council committee meetings to be held virtually for a temporary period

See <https://www.gov.uk/government/news/robert-jenrick-reaffirms-support-for-councils-in-their-coronavirus-response>

3.3 The Government are also setting forward a series of legislative changes to deal with the pandemic. On the 19th March 2020 the House of Commons had its First Reading of the Governments Coronavirus Bill. It will have its second reading on the 23rd March and if it is approved, the third reading will also take place to speed up the usual decision making process to approve legislation.

3.4 At the time of writing this report, the Coronavirus Bill deals with a number of issues that affect Local Government (whilst also considering wider implications) which include, amongst other things:

1. Emergency registration of health professionals
2. Temporary registration of social workers
3. Emergency volunteering leave and compensation
4. Modification of mental health and mental capacity legislation
5. Health service indemnification
6. NHS and Local authority care and support
7. Registration of deaths and still births
8. Powers to do with RIPA
9. Powers to ask for information regarding food supply chains and enforcement
10. Suspension to hold inquests with juries
11. Temporary closure of schools and childcare premises
12. Powers relating to potentially infectious persons
13. Powers to issue directions relating to gatherings
14. Use of video and audio technology for **court** proceedings
15. Powers in relation to dead bodies
16. Postponement of elections, referendums etc

3.5 Currently the Bill is not drafted to include some of the specifics that affect local government decision making but some amendments are being considered to allow for Regulations to be made to deal with some of these issues. The Local Government Association are asking Government to also consider the following provisions:

1. Postponement of the legal requirement to hold a Council's Annual Council Meeting
2. Postponement of Education Appeals

3. Postponement of Police and Crime Panels
4. Postponement of referendum- Neighbourhood Plans
5. Relaxation of the requirement for a Councillor to attend at least one meeting every 6 months rule
6. Councils meetings requirements and holding virtual meetings or postponing Council meetings in the absence of no provision in constitutions
7. GDPR –allow the use of the electoral register personal data sharing to map the location of over-70s in order to provide essential support without risk of prosecution.
8. LEPs-relaxation of requirements on decision-making in assurance frameworks to cope with potentially diminishing numbers of LEP members well enough to participate in decision making and to expand the ability of LEP officers to make decisions.
9. Quoracy of approved virtual meetings
10. Holding of virtual planning committee meetings

3.6 It is understood that some of these proposals may be considered as an amendment to the Bill and therefore the consequences of any legislative change will be assessed.

4.0 Proposal for Decision making where Committees cannot meet.

4.1 The Council makes a myriad of decisions through the use of Committee meetings, individual Executive Member decisions and officer decisions. In order to follow the guidance on social distancing, it is necessary to review the Council's requirements for having meetings. The Council will cancel the majority of physical committee meetings until government guidance is issued to allow public meetings.

4.2 The Council's Constitution, like many Council's constitutions, provide a specific delegation to the Chief Executive to provide "In cases of emergency to take any decision which could be taken by the Council, the Executive of a committee."

4.3 The Coronavirus pandemic is considered to be an 'emergency and therefore it is proposed to invoke these powers to enable the reduction of public meetings to take place.

4.4 It is recognised that engaging with our Councillors and with the public is still important to ensure that we have democratic accountability, transparency and effective decision making. Therefore, it is proposed that where the Chief Executive (or his delegated nominee) considers it appropriate, the Council will consult with the relevant available members and officers before making a decision. This consultation can take place through the use of video or audio communication. The rules of local government apply which states that the decision taker must take his or her own independent decision, but that view can clearly be informed by any report produced and the views of the Members who have considered the report. The decision taker will then record the decision and the reasons in the normal way.

4.5 The position with regard to formal virtual meetings will also be considered if the legislation is enacted to allow this to take place and that the Council can meet the conditions that are imposed on this.

4.6 In addition, the usual powers that are delegated to the Leader and individual Executive Members will continue and formal Member decisions will continue in the usual way with decisions being able to be made remotely and published as necessary.

IMPLICATIONS FOR PLANNING DECISIONS

1. For the Planning and Regulatory Functions Committee (PRFC), this will mean that the majority of decisions on planning applications which are currently dealt with by the PRFC (namely any planning applications which are subject to an objection on material planning grounds) will be taken by the Chief Executive Officer pursuant to the Council's Constitution.
2. Prior to Chief Executive exercising this decision it is proposed that:
 - Committee Papers will be provided to members of the PRFC as usual and published on the website
 - Relevant site photos and plans will be provided as part of the planning officer report if considered appropriate
 - Advice to the Members and the public will be provided on the website as to how they can engage and make representations on planning applications to be considered for a decision by the Chief Executive
 - a telephone conference / skype meeting involving as many members of the PRFC as are available and relevant officers will be convened this; this meeting will take the reports as read; will allow for Members to ask questions of Officers; enable any representations from Members (not on the PRFC) or the public to be read out and enable the Members to debate the application after which they will formulate a recommendation for the Chief Executive to consider in reaching a formal decision.
3. In undertaking decision making the Chief Executive will have regard to the Planning Officer report, any representations from the Members of the County Council not on the PRFC and the public and discussions held by the PRFC and their recommendation. He may also consult with Chair and or Vice Chair before making any decision.
4. In cases where a planning application has been submitted by or on behalf of the County Council in relation to development by or for the County Council and is ready for determination it will necessary for the Council's Monitoring Officer to consider whether the decision can be postponed until PFRC can sit as normal again or whether the above delegations will be utilised, with consideration of appropriate safeguards in place where there is a perception that the County Council is making a planning determination on its own application.

5.0 Financial Implications

- 5.1 There are significant financial impacts with regard to the Coronavirus pandemic and this reports simply seeks to allow appropriate decision making to take place whilst the Country is following a policy of Social Distancing.

6.0 Legal Implications

- 6.1 The legal impacts are highlighted in the report and this report seeks to ensure the continuance of appropriate legal decision making in light of the current circumstances. Attached at **Appendix 1** is the joint statement by LLG and ASDO with regard to their advice on decision making.

7.0 Equalities Implications

- 7.1 There are no specific equality implications in this report in that decision making will continue. However it is noted that the lack of physical meetings will need to be assessed with regard to its impacts on our communities.

8.0 Recommendations

For the reasons set out in the body of this report:

- 8.1 To note and endorse the approach of following the emergency decision making process that is identified in the report to allow the Chief Executive to make all appropriate decisions and to allow for appropriate consultation.
- 8.2 To note and endorse that the Assistant Chief Executive (Legal and Democratic Services) will review legislative changes and revised guidance to Local Government Decision making and to implement appropriate decision making processes including virtual meetings if and when the legislation allows for this and it is considered appropriate to do so.

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Appendix 1:

“LLG and ADSO have received several enquires as to the position with local authority decision making and the democratic process in light of the Coronavirus. This has included the suggestion that both associations should lobby for a change of legislation to allow remote meetings if the situation deteriorates to the point that all meetings must be cancelled.

Questions have been asked as to how local government should react to a requirement for curtailment of public gatherings, including meetings of councils. This may be the case in response to a Government direction or the decision of local authorities (or their members) based on local circumstance.

Local authorities are required to hold meetings to make decisions. The Local Government Act 1972 requires members to be physically present in order for a meeting to take place. The exception to that rule is in Wales, where remote attendance is allowed under the circumstances provided by section 4 of the Local Government (Wales) Measure 2011 provided there is a quorum of 30% physically present.

In terms of day to day executive authority, those with executive leaders or elected mayors can rely on single member decision making without the need for Cabinet meetings if their Constitutions allow. Even where those decisions must be made in the presence of an officer, (which is a sensible approach taken by many), this can be arranged in a different way or authorities can change their schemes of delegation now to alter those rules to accommodate remote presence in exceptional circumstances.

For other decisions or those with a committee system, almost all delegation schemes include a reserve power to their Head of Paid Services to undertake responsibility for delegated functions of the authority in exceptional circumstances, albeit that differing authorities can sometimes insert various additional conditions. Given that these times are indeed exceptional (and a declared pandemic should meet the test for this), meetings might be cancelled and replaced with the alternatives this provides.

The decision making might take a number of forms; the most inclusive is that a decision, that would otherwise have been on the agenda for a committee, is now made by an officer, but that the officer is advised in their decision-making by the views of members of the committee, which are then accessed remotely at an agreed time by way of Microsoft Teams, Skype, etc. The officer cannot in law fetter (constrain) their discretion entirely, but that does not mean that they cannot give almost overwhelming weight to a vote of committee members responding remotely to a report and officers' advice, or even after seeing videoed submissions in lieu of public access.

Local authorities are advised to review their schemes of delegation to ensure that provision is made for other officers to take urgent decisions in the event of the Chief Executive/Senior Management Team being indisposed due to the virus.

This then leaves those meetings which must be held. Here authorities can only rely on the quorum and discussion with the political groups. If they agree, then the meeting could go ahead on a quorum basis, made up proportionately from each political group. This would allow, for example, a full council meeting to quickly agree core business only and be made up of a quarter of their number, each sitting as spaced apart as the chamber allows.

LLG and ADSO have written to the Ministry to echo the LGA's recent request that the government looks again at the accessibility of council meetings by use of remote means. It is likely however that that any change which might be made will take too long to implement for use in the current climate and is likely to be bottom of the list of the government's priorities in terms of the emergency legislation it wants to put through. Nevertheless, LLG and ADSO will continue to keep you updated on any developments.”