# The implications of delegated and virtual decision-making

2 April 2020 by David Blackman

**Local authorities are looking at using emergency delegated powers and a system of 'virtual' planning committees to allow decision-making to continue during the coronavirus outbreak. But practitioners warn that delegated powers are likely to be suitable for just a limited number of applications, while virtual committees face technical challenges and are likely to limit public participation.**

Councils across the UK cancelled planning committee meetings within days of the government's announcement, just over a fortnight ago, on social distancing restrictions in the wake of the coronavirus outbreak. But while the pandemic has left the local government calendar in tatters, efforts are under way to keep the development management show on the road.

The main headaches surround decision-making. Under the 1972 Local Government Act, councils cannot operate committee meeting unless they are 'quorate', which means a minimum number of members much be physically present, with the precise number dependant upon the authority's constitution.

Given the current restrictions on social distancing and travel, many authorities have been exploring how they can delegate decision-making powers to senior officers. Council constitutions usually contain emergency powers that enable the chief executive to take decisions deemed necessary in an emergency to keep the council functioning, according to guidance issued by the Planning Officers Society (POS) last week.

Under delegated arrangements, while planning committee members can be consulted on an application, the decision lies in the hands of the officer. This means there will be limits in practice to the delegated powers that councils are likely to allow officers to exercise even in the current emergency situation. The POS guidance suggests that councils should "take the sensible decision that major or strategic applications ... will continue to go to committee", but householders and minor applications should go through the emergency delegated process. "Anything controversial would still be resolved through planning committee," said Andy Meader, senior director of planning consultancy Pegasus.

Among the councils that have already introduced such powers are Manchester City Council and Wychavon District Council in Worcestershire. The latter has delegated planning powers to its managing director, his deputy managing director and the planning committee chair or vice-chair. Contrary to the POS advice, Manchester's chief executive will make decisions on major applications in consultation with the authority's head of planning and the planning committee's chair and deputy chair.

There is no reason why chief planners cannot exercise such delegated powers, suggested Victoria Hills, chief executive of the Royal Town Planning Institute (RTPI). "The chief planner is subject to professional competence and the code of conduct," she said.

"Committees often delegate back to chief planning officers for determinations anyway but this is a bit more formalised."

Following pressure from the RTPI and other bodies, the government included provisions in its hastily-legislated emergency Coronavirus Act to allow council planning committee meetings to be held using virtual technology. The regulations, giving effect to this legislation, were laid by the government in draft form yesterday(Thursday).

A conference-call or video-link meeting is "relatively easy" to organise, says the POS guidance, thanks to the widespread availability of platforms like Microsoft Teams or Zoom. But the advice note warns that, when using such software, managing the large number of people involved in a planning committee, which can number up to 20 members alone, would be a challenge for the chair. It suggests reducing the number of elected members to the minimum necessary to maintain political balance as well as the fewest possible officers.

Sara Whelan, group manager for development management and planning at Dacorum Borough Council in Hertfordshire and POS policy manager, said the authority is considering holding a Microsoft Teams meeting with a quorate number of planning committee members. The whole meeting would then be linked to Facebook Live so that members of the public can post comments. If the virtual committee is uncomfortable about making a decision in these circumstances, it will seek to extend time for consideration, she said.

Meanwhile, Luton Borough Council last week held a partly-virtual development control committee. It involved four members physically attending, at an appropriate social distance, to meet the minimum required for a quorum. The meeting was held through Skype for Business allowing the rest of the committee plus officers to participate.

But using such methods means there are likely to be technical problems, warned Nigel Hewitson, a consultant at lawyers Gowling. "Every member will not necessarily have the technical kit to do virtual video conferencing," he said.

An added complication is that not all councils have equipped their planners with phones and laptops so that they can work from home. "Some are more geared up for remote working than others," said Martin Hutchings, improvement manager at the Local Government Association's Planning Advisory Service. "It's going to hit quite hard at the moment if your team is sharing a laptop."

There will also be question marks over the technical support that councils can provide for those conducting a virtual meeting, particularly given the current pressures that authorities are under, he said. To help safeguard against glitches on the night, Hutchings said some councils have been holding dry runs of virtual committees.

How to ensure the public can participate is likely to be the biggest headache confronting those organising virtual planning meetings, with most, but not all, committees offering speaking rights, pointed out Robyn Prince, a director in consultancy Boyer Planning's London office. Luton's part-virtual committee, for example, was not open to the public.

Involving the public at meetings will be "tricky", said Michel Gallimore, a partner at planning law firm Town Legal. He added: "The idea that people will have right to speak is probably a bit fanciful at the moment."

One solution that Dacorum is mulling is to give key speakers the opportunity to submit a short video rather than speaking in person as they normally would. This could work, said Prince, "as long as the process is transparent". She said: "Everyone would prefer the opportunity to be there in person and defend the application but we can't do that so you just have to be adaptable and use whatever technology is available to make your point."

But video conference technology will not permit the mass participation possible at physical meetings, Hewitson pointed out. "When you have a major application where a lot of people object, normally they would pack the council chamber." He warned that large numbers of people using the software might "overwhelm the technology" and it "simply won't be able to cope".

The flipside of this is that watching a webcast will be an inherently passive experience that will provide members of the public with less opportunity to exercise their voice, said Hutchings. "You can't get involved. You won't be able to replicate the whole theatre of planning committees."

But Meader said: "While it will take some of the theatre out of the environment, it shouldn't damage decision-making. If anything, councillors will be able to focus on the real issues being presented. Opponents should be able to have their say." He added that members may have to focus on other gauges of public concern, like the number of letters of objection sent in.

One thing is certain, like the rest of society, the development management process will have to be adaptable to negotiate the unfolding crisis.

## How site visits could be carried out during the coronavirus crisis

A further challenge for officers and members involved in development management is how the traditional application site visit can be conducted in the new era of social distancing. While it is "quite common" for building control officers to work from photos, it is a harder exercise for planners because of the need to take into account issues like the context of the development proposal on backgrounds and views, said Martin Hutchings of the Planning Advisory Service.

Victoria Hills, chief executive of the RTPI, said there are opportunities through technology to do more virtual visits. There should also be no issues with conducting external visits, which can be conducted from the safety of a car or a bicycle, she added. A further option is asking applicants for photos of sites when submitting applications, said Dacorum Council's Sara Whelan. "The applicant knows the site and can talk you through exactly what is happening."