The implications of delegated and virtual decision-making

Extracts from PlanningResource

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.

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."

The regulations published in the first week of April 2020 permit local authority members to attend meetings remotely, either by phone or video link. The basic requirements are that members can be heard and can hear others, with video links only required "where practicable".

The regulations extends the definition of the "place" where meetings can be held to include digital or virtual locations like web addresses and telephone conference calls.

Committee members attending remotely must be able to hear each other, as well as applicants and council officers.

However, they will only need to be able to hear members of the public if the latter are registered and entitled to speak at the meeting.

Members of the public must able to hear what is going on, but there will be no requirement to hear them unless they are entitled to speak because they have registered.

To qualify as "open to the public", the meeting should be accessible through remote means including video conferencing, live webcast and live interactive streaming.

Where a meeting is accessible to the public through these remote means, it will be judged open to the public whether or not they are able to attend the meeting in person.

Local authorities will have leeway to make their own standing orders on voting arrangements, access to documents and the form of remote access to be made available to the general public.

The regulations, which only apply to council meetings to be held before 7 May 2021, also enable requirements for public and press access to documents associated with council meetings to be complied with through remote means and website access.

The new regulations apply to all local, combined and national park authorities. Joint planning committees, established by local planning authorities under the provisions of the Planning and Compulsory Purchase Act 2004, will also be covered.

Local government secretary Robert Jenrick said: "Local authorities are the backbone of our democracy and they are playing a vital role in the national effort to keep people safe. This change will support them to do that while maintaining the transparency we expect in local decision making.

"It's critical that they continue to provide essential services and find innovative ways to maintain important economic functions they perform like the planning system and they will now be able to do so."

According to a statement from the Ministry of Housing, Communities and Local Government (MHCLG), it "will be up to each local authority to decide how they conduct meetings, how voting procedures work and how to ensure that the public has access".

Nicola Gooch, planning partner at solicitors Irwin Mitchell, said: "The regulations give a great deal of scope for creativity and flexibility by local authorities when deciding how to hold 'virtual' meetings, and are not prescriptive on the technological solutions to be adopted.

"It may be possible for a number of authorities to adapt solutions that they already have in place for live streaming council meetings; or to move to other commercially available video or telephone conferencing facilities.

"If this freedom is widely taken up, and found to work well, we may find that the regulations last beyond their current May 2021 expiry date."