

# Local Authority Decision Making in a Time of Crises

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1. Many councils have much of the infrastructure necessary for officers to work remotely and this could prove essential to keeping the planning system operating - provided that everyone recognises the role that technology can play as a temporary stopgap.
2. This brief note, which may be overtaken by events, is intended to set out a few suggestions for how decision making in the planning sphere can carry on.

## Decision Making by Committee: The Legal Position

3. Sch. 12, §39(1) Local Government Act 1972 requires councillors to be physically present at a meeting when local authority decisions are taken. There is no provision to allow participation or – more importantly – voting by remote means.
4. In two important documents, the Association of Democratic Services Officers have suggested a way forward:
  - (1) [Joint Statement from ADSO and LLG – LA decision making and democracy in light of coronavirus](#)
  - (2) [Letter to Secretary of State](#)

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5. The ADSO is seeking an urgent amendment to the Local Government Act 1972 to allow (amongst other matters) the remote participation and remote voting by councillors at essential council meetings.

### **The “Delegation +” Model**

6. For the time being, a number of Councils are making/have made urgent amendments to their constitutions to allow Heads of Service to take decisions that would otherwise be taken by Committee. The approach being adopted by a number of authorities is that a decision - which 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. This advice is gathered remotely at an agreed time by way of Microsoft Teams, Skype, etc. In most cases the officer would be likely to give overwhelming weight to the views of Members even if they did not have a formal and binding vote. This is a flexible response borne of necessity.
7. Some local authority constitutions may already be sufficiently flexible to allow this “delegation +” model of decision making but others may require an urgent amendment. Note that a variation to the constitution will usually require a quorate meeting of full Council, meaning a quarter of Members must be present to vote: see Sch. 12, §6 Local Government Act 1972.
8. Given that the measures suggested and imposed by Government are changing on almost daily basis, the window within which to make these amendments is narrowing rapidly.

### **Members of the Public**

9. Many council constitutions provide a right for applicants and objectors to speak at Planning Committee meetings. The current exceptional circumstances should not exclude members of the public but we suggest that every effort is made, whether through social media, the council’s planning portal or otherwise, to allow members of the public (who would otherwise be entitled to speak at a Committee Meeting) and applicants to make their views known.

## Case Study

10. Fylde Borough Council did not possess a constitution that would allow Heads of Service to act under a 'delegation +' model, so an amendment was required. The proposed recommendation was as follows:

"1. That the Council delegate the following decision-making powers to the Chief Executive, Directors and Heads of Service in consultation with the Leader/Mayor/Chairmen and relevant members of the respective committees, with immediate effect:

*Powers to take any decision on behalf of the council which can lawfully be delegated to officers, subject to the decision-taker, before taking the decision, having taken appropriate steps to consult the chairman and members of the committee which would, save for this delegated power, have taken the decision.*

*Power to cancel council, committee or sub-committee meetings.*

2. That the Chief Executive reviews the alternative decision-making arrangements each week, or more frequently as required, in consultation with Group Leaders, taking into consideration the latest advice from government and appropriate agencies, to determine whether to revert to the normal committee procedures, and that the arrangements be additionally reviewed by members when it is next appropriate, taking into account that advice, for a scheduled meeting of the full council to take place."

11. The clear expectation was that decisions made under this arrangement would be made only after effective consultation – by telephone or video conference – had been undertaken.

**N.B. – this Note does not constitute legal advice but is meant to provide some general guidance to local planning authorities in these quite exceptional times. Should any further and formal assistance be required please contact Kings Chambers (Gary Smith or Mark Ronson on 0345 034 3444)**

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