

TONBRIDGE & MALLING BOROUGH COUNCIL

OVERVIEW AND SCRUTINY COMMITTEE

11 March 2021

Report of the Director of Central Services and Deputy Chief Executive

Part 1- Public

Matters for Recommendation to Cabinet

1 VIRTUAL MEETINGS & HOMEWORKING

This report provides an update to the previous scoping report on virtual meetings and homeworking

1.1 Background

1.1.1 The scoping report considered by this Committee on 3 December 2020 set out the basis for a review of virtual meetings and homeworking. A number of options for inclusion in the review were set out as follows:

- the effectiveness of the adopted protocol for the use of video-conferencing facilities;
- whether post pandemic, the Borough Council wished to continue with virtual Council meetings;
- the feasibility of rationalising the Borough Council's office accommodation at the Gibson Building, with a view to increasing the amount of homeworking to support the Climate Change Strategy and reduce overheads.

1.1.2 Members recognised that the adoption of virtual meetings had been a necessity during the coronavirus pandemic and had meant that the Borough Council business and decision making continued. A number of Members felt that the virtual meeting experience had been positive as the arrangements were efficient, transparent and aided structured debate. Other Members expressed a preference for a return to face to face meetings. It was suggested that the review should give consideration to hybrid as well fully virtual and fully physical meetings. In addition, Members supported the continuation of livestreaming meetings so that residents were able to observe proceedings.

1.1.3 With regard to homeworking, Members expressed support for reviewing the feasibility of rationalising office accommodation and the Borough Council's assets. However, Members were mindful of the work/life balance and the potential impact on staff of different working arrangements. The Director of Central Services

indicated that the welfare of staff remained a priority for the Borough Council and the review would consider all options carefully.

1.1.4 Members resolved to include all of the options set out above, subject to the inclusion of exploring options for

- hybrid meetings
- fully virtual meetings
- fully physical meetings; and
- the continuation of livestreaming meetings even if the current regulations were not extended;

1.1.5 This report updates members on the current position in relation to both virtual meetings and homeworking and asks Members to consider initial proposals for amendments to the existing protocol.

1.2 Virtual Meetings

Legislative position

1.2.1 As set out in the previous report to this Committee, Virtual meetings are permitted by the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panels Meetings) (England and Wales) Regulations 2020. These regulations are of temporary effect, as they apply only to meetings required to be held, or held before 7 May 2021. It is possible that Parliament may seek to extend the regulations prior to that date, however the Government has indicated that any extension would require primary legislation and that no such parliamentary vehicle exists to achieve that prior to 7 May.

1.2.2 We are aware that Lawyers in Local Government (LLG) and the Association of Democratic Services Officers (ADSO) are looking to assist the government by exploring legislative options for the extension of appropriate powers. However, at the time of preparing this report the position remains that the current powers to hold virtual meetings are due to expire on 7 May 2021.

1.2.3 In the meantime, and given the current national restrictions, the present ability of the Council to hold anything other than fully virtual meetings will largely be dictated by the national situation in relation to coronavirus.

1.2.4 Officers are continuing to investigate the practical and financial aspects of the options identified at 1.1.5 above and a report on these will be presented to the next meeting of the Overview and Scrutiny Committee.

Review of Protocol

- 1.2.5 On 07 May 2020 the Leader exercised his powers under paragraph 1.4 of the Executive Procedure Rules to amend the extent of delegation to the Monitoring Officer so as to allow temporary changes to be made to the Constitution to facilitate virtual meetings.
- 1.2.6 The amendment to the Constitution as made by the Monitoring Officer i.e. the inclusion of a protocol for the use of video-conferencing facilities is set out at **Annex 1**. The proposed amendment was agreed by the Leader and Deputy Leader, and notified to all Members on 14 May 2020, and subsequently reported to Council on 14 July 2020.
- 1.2.7 The effectiveness of the Protocol at Annex 1 has been considered by Officers as part of this review.
- 1.2.8 Officers have also consulted with the Chairs and Vice-Chairs of planning committees to ascertain whether there are processes which could be improved for public speaking, (whether within the video-conferencing protocol or rules for public speaking at virtual planning meetings).
- 1.2.9 A number of legal commentators have expressed views on data protection and GDPR compliance and virtual meetings, and the extent to which attention needs to be drawn to the data rights of individuals (Councillors, Officers and the public) at such meetings. In response to this, in addition to the specific privacy notice which the Council already has in place for virtual meetings, it is proposed within the revised protocol that the Chair of the meeting should specifically draw the attention of those present at the meeting to the fact that faces and voices will be “livestreamed” and kept on the Council’s YouTube channel for a period up to 6 months. A link to the Privacy Notice is also included in the revised Protocol at **Annex 2**.
- 1.2.10 Where motions are amended during debate, it has been noted that the final revised motion can be difficult to keep track of in a virtual setting. The revised draft protocol suggests, in order to address this, that members would be able to request that the revised motion be typed by the Democratic Services Officer (DSO) (or other appropriate officer) into the “chat” on MS teams ahead of any vote on an amended motion.
- 1.2.11 The use of a “roll call” of members was adopted from a relatively early stage in the use of virtual meetings, and has been of benefit to committees, chairs and the DSOs as a tool for ensuring attendance and vote counting are accurately recorded. It is therefore proposed that this becomes a formal part of the protocol. Rule 3.10 of the revised Protocol suggests that the formal roll call could be accepted by the Borough Council as the equivalent of signing the attendance sheet. This reduces the need for hard copy lists and reduces the risks of Members not signing the attendance sheet during the meeting and streamlines the whole process.

- 1.2.12 With the switch to internet-based meetings, some connection difficulties were inevitable, particularly if members, officers and the participating public are based in more rural areas where broadband speeds may be an issue. From the outset of the protocol, safeguards have been put in place to ensure that participating members are aware of all material issues put within a debate. In certain circumstances it may be the case that connection problems are so severe that a voting member misses a key issue in the debate. In those circumstances, the voting member affected should not take part in a vote as this risks the member not having taken into consideration that issue (which may have affected their vote on a matter).
- 1.2.13 In practical terms, where this has happened, the member concerned has often advised the Chair and DSO that the connection issue has occurred and will seek advice from the DSO (and/ or legal adviser where present) as to whether they are still entitled to vote. This is good practice which should continue but is not necessarily something which can be captured within a rule. The protocol proposes to continue to allow the Chair to temporarily postpone a meeting if they become aware of connection difficulties but Committee may wish to consider whether this should be clarified to only apply to a situation where there are a number of members unable to participate due to a connection problem, for example where a meeting became inquorate or otherwise unworkable. The protocol proposes retaining the general discretion to the Chair to take a short adjournment for individual member's connection difficulties if necessary to maintain proper conduct of a meeting. If the Member in question is unable to alert the Chair or Democratic Services Officer to a technical problem, they are asked to contact their ward colleague who will make the issue known via the chat function.
- 1.2.14 Rules for voting have been made clearer in the revised Protocol as set out at 3.24 to 3.29. Rule 3.26 emphasises that a vote conducted by way of a formal roll call shall not be treated as a recorded vote, as set out in CPR 8.5 of the Constitution, and will not be recorded in the Minutes unless requested by a Member as per CPR 8.4 and CPR 8.6 of the Constitution.

Rules for Public Speaking at Virtual Planning Committees

- 1.2.15 There are also a number of considerations for committee in relation specifically to planning committee meetings, under the public speaking rules for virtual meetings.
- 1.2.16 The rules originally made provision for the submission of written statements to be read out by the DSO in lieu of a member of the public "attending" virtually. There is no parallel provision in the rules for physical meetings. In practice (on occasion) this has led to the submission of large numbers of very similar statements for the DSO to read out and the Chair and Vice-Chair have had to decide how the material points are best put to members. The revised protocol suggests removing the ability for written statements to be read out *save where* the member of the public has difficulty connecting to the meeting on the day. Committee may alternatively wish to consider whether, if written statements are to be retained, to put on a formal

basis that the Chair has discretion as to how many statements will be read, and that other statements will be provided in writing as an electronic “pack” to members of the committee.

- 1.2.17 Once a member of the public has made an address to planning committee, the present rules allow for “points of clarification” to be asked of the speaker. This is not an opportunity of detailed questioning or “examination” of a speaker’s representation, but for issues of fact to be clarified if not understood. What is permitted as a point of clarification is for the Chair’s discretion and officers have issued some guidance on this. However, there is a general sense amongst the Chairs and Vice-Chairs that this rule can be applied unevenly across the 3 area committees and even depending upon the particular speaker. What may or may not be a “point of clarification” is very much circumstance-specific and risks arise to decision making if certain speakers are seen to be given an “advantage” (in terms of more time to address the committee on their points through questioning) over others. The revised rules therefore suggest removing the ability for points of clarification to be raised with public speakers.

- 1.2.18 Related to this is the ability (or otherwise) of planning committees to receive technical advice on matters which fall to statutory consultees to provide guidance on (in particular, highways matters).

- 1.2.19 In the first instance, the primary advice on such matters is received in writing as part of the application process and will be summarised (or sometimes reproduced) in officer reports. Insofar as possible members should of course engage with these matters at an early stage if there are matters of detail which they consider need to be covered or revisited.

- 1.2.20 In relation specifically to highway matters, KCC Highways officers often are present to assist the planning officers in giving advice on matters affecting the highway network- for which KCC are of course responsible. In these circumstances KCC Highways officers are often asked questions on their technical assessments, through the Chair.

- 1.2.21 Members may wish to consider whether the highways (and other technical) consultants of applicants or others making a representation should be afforded the same opportunity. It should be borne in mind that whilst KCC highways are responsible for the highway network- and should be taken to understand what they consider appropriate or not on their network- those representing applicants or other interested bodies will be seeking to make a case which best supports their client’s position (whether for or against an application). With this in mind, officers strongly consider that the current arrangements should not be changed: there is a legal requirement to give significant weight to the views of statutory consultees, a position which does not exist with regard to other technical representations. Having these open to questioning risks “muddying the waters” as to the relative weight which should be afforded to certain representations and leads to risks to decision making.

1.2.22 Were Members minded to consider changes to these provisions, it is suggested they should consider whether there is a requirement for rules which:

- provide for a separate section of the discussion to be allocated to technical consultees;
- limit the time for questions of technical consultees;
- enable consideration of the qualifications of consultees and a decision to be reached as to whether they would “qualify” for the “technical discussion” and;
- make provision for whether such a discussion would be permitted in the absence of the statutory consultee responsible for the issue (for example, highways, heritage, air quality) to avoid committee being given a single-sided view of such matters.

1.2.23 There may be a requirement to amend the Constitution in the longer term if it is considered that some of the provisions outlined in the temporary arrangements should be carried over to the formal Rules set out in Part 4.

1.3 Homeworking

1.3.1 The vast majority of Council staff have worked from their homes since the middle of March 2020. Staff have currently been advised to work from home until at least 30 June 2021, with a further review to be undertaken in mid-May. In the meantime, Management Team continues to progress its review of longer term working arrangements with a view to embedding increased homeworking into working patterns. The review is presently focussing on the categorisation of staff roles with a view to identifying which roles require an office base for some/ all of the working week, which roles are predominantly field based and which roles can be performed effectively from home. This work will be important in calculating the core office space requirements for the Council. As part of the review we have also recently conducted a staff survey to ask staff for their views on remote working. The results of that survey were reported to the Joint Employee Consultative Committee on 25 February 2021.

1.3.2 Some services/ staff have continued, or resumed working from locations other than their home address to varying degrees where there has been a business need to do so or if it has been impractical for individual members of staff to work from home. For example, some services are unable to work from home due to the nature of the specific work they undertake e.g. Civil Enforcement Officers. Presently the numbers of staff at the Gibson Building vary from day to day (between 20 and 30), Staff are also present at Tonbridge Castle, and engaged in work activities at other locations e.g. Environmental Health Officers will be making visits to premises.

1.3.3 If the Borough Council is to progress viable alternatives to the current working arrangements at the Gibson Building, it remains the case that the consent of Kent

County Council will be required in order to release or modify the relevant restrictions on our title. Officers have therefore been in further discussions with Kent County Council to consider options for a mutually acceptable way forward.

- 1.3.4 We have specifically explored with KCC whether it would be feasible for both authorities to rationalise their office accommodation at Kings Hill e.g. through co-location. In this regard a joint expression of interest was submitted to One Public Estate in October 2020 for revenue funding (up to £50,000) to progress feasibility & options appraisal work. The bid was subsequently included in the OPE Phase 8 bid for funding. We are expecting that the Secretary of State will announce the outcome of the Phase 8 bid process in March 2021. A verbal update will be provided at the meeting.

1.4 Legal Implications

Virtual meetings

- 1.4.1 Section 100A(1) of the Local Government Act 1972 requires that meetings of the Council shall be open to the public unless the meeting has resolved to go into private session to deal with confidential or exempt information (as defined in Schedule 12A of the Local Government Act 1972).
- 1.4.2 However, during the coronavirus pandemic, the Government has temporarily removed the legal requirement for local authorities to hold public meetings in person. 'Open to the public' is given a wider meaning to allow purely remote access, and includes access through remote means including (but not limited to) video conferencing, live webcast, and live interactive streaming and where a meeting is accessible to the public through such remote means the meeting is open to the public whether or not members of the public are able to attend the meeting in person.
- 1.4.3 The most common means of allowing remote access is to webcast the meeting, but a meeting can be held by purely audio means and so public attendance can also be purely audio. Note however that the public would only attend by remote access if they are able to observe in real-time. Having the meeting recorded and broadcast later is not sufficient.
- 1.4.4 The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panels Meetings) (England and Wales) Regulations 2020 are of temporary effect, as they apply only to meetings required to be held, or held before 7 May 2021.

Homeworking

- 1.4.5 As an employer, the Council is responsible for employees' welfare, health and safety 'so far as is reasonably practicable' (s2, Health and Safety at Work etc Act 1974). It must also conduct a suitable and sufficient risk assessment of all the work activities carried out by employees, including homeworkers, to identify hazards

and assess the degree of risk (Reg 3, Management of Health and Safety at Work Regulations 1999).

- 1.4.6 In addition to the statutory duties, the Council has a common law duty to take reasonable care for the safety of its employees e.g. a duty to see that reasonable care is taken to provide staff with a safe place of work, safe tools and equipment, and a safe system of working. It is also an implied term of employment contracts that employers will take reasonable care for the health and safety of employees and provide a reasonably suitable working environment for the performance of the employee's contractual duties.

1.5 Financial and Value for Money Considerations

- 1.5.1 None arising out of this report.

1.6 Risk Assessment

- 1.6.1 As set out in report.

1.7 Equality Impact Assessment

- 1.7.1 To ensure that the Borough Council have due regard to equality duties an Equality Impact Assessment will need to be undertaken if it is opted to make any changes to the contractual working arrangements for staff.

1.8 Policy Considerations

- 1.8.1 In the addendum to the Corporate Plan for 2020/21, Cabinet agreed the following as part of the 'Running the Council' theme within the Review, Reorientation and Recovery strategy:-

- We would undertake a review of the effectiveness of homeworking/flexible working and the potential to embed it within the culture of the Council in the longer term;
- Where appropriate, Managers to build flexible working into the work patterns for their teams in order to build resilience into the organisation and embed new ways of working;
- To review office accommodation requirements in light of changes to homeworking/ flexible working and in order to reduce overheads and meet the targets set within the adopted Climate Change Strategy

- 1.8.2 In respect of the 3rd bullet point above, Members are also asked to note that Cabinet resolved (30 June 2020) as follows:-

'Management Team be asked to conduct a review of all the Borough Council's assets, including use of the Gibson Building, to cover all areas as well as the need, function and capability of the Council Chamber and Committee Room for Council,

Cabinet, Advisory Board and Committee meetings, in line with the Digital and Climate Change Strategies.’

1.8.3 The Draft Climate Change Action Plan for 2020 includes the following targets under the theme of ‘TMBC Estate’ –

- Undertake an assessment of business mileage for all staff and develop a policy to support tele-conferencing and skype meetings to reduce business travel;
- Amend the homeworking policy to encourage greater take up of homeworking/ flexible working where possible, to reduce home to work travel

1.9 Recommendations

1.9.1 Members are asked to **RECOMMEND** to Cabinet that:

- (1) the amended Protocol at Annex 1 is approved ;
- (2) the amended temporary arrangements for public speaking are approve

Background papers:

None

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