

<b>Committee:</b> Extraordinary Council	<b>Date:</b> 29 <sup>th</sup> April 2020
<b>Subject:</b> Emergency Committee	<b>Wards Affected:</b> All
<b>Report of:</b> Jonathan Stephenson, Chief Executive	<b>Public</b>
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## SUMMARY

Due to the current situation with COVID19 preparatory work needs to be undertaken to ensure that Council business and decision making can continue in these unprecedented times.

The Coronavirus Act 2020 [the Act] received Royal Assent on the 25 March 2020, s78 gave the Secretary of State the power to make regulations to govern the way local authorities held meetings. The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 [the Regulations] came into force on the 4 April 2020. These Regulations enable local authorities to hold remote meetings, and for attendance at these meetings to be attendance for the purposes of the Constitution.

Suggested changes to the Council's Rules of Procedure are at Appendix D.

This report recommends the convening of an Emergency Committee and the powers that this would take on and how this would work in these unprecedented times. This committee would consider emergency and business continuity items and will operate until the council has the dedicated resources available to support the reintroduction of a full committee structure.

Proposed Terms of Reference are attached to this report at Appendix A. The meeting will also consider the suspension of the six-month rule in relation to Members attending meetings and the approval of the proposed calendar of meetings for 2020/21 at Appendix B.

## **RECOMMENDATIONS**

**Members are asked:**

- R1. To agree the Terms of Reference (Appendix A) for the Emergency Committee.**
- R2. To agree to include the Emergency Committee within the Council Constitution at Chapter 3 at 2.10 and to agree the changes of the Council's Rules of Procedure at Part 4 of the Constitution as set out in Appendix D.**
- R3. To agree to suspend the six-month rule in relation to Members attending meetings of the Council and the Committees on which they serve, pursuant to Section 85 (1) of the Local Government Act 1972. This will be reviewed by the Monitoring Officer on a monthly basis, and will follow the Government guidance and legislation when determining if it no longer apply.**
- R4. To agree the proposed calendar of meetings for 2020/21 (Appendix B).**
- R5. To agree the holding of remote meeting in compliance with the Regulations for as long as it necessary. The Regulations are time barred and cease to have effect on the 7 May 2021, unless extended by further legislation.**
- R6. To agree the Chief Executive to summons remote meeting as necessary and develop the required protocols and procedure to hold remote meeting.**

## **MAIN REPORT**

### **INTRODUCTION AND BACKGROUND**

- 1. In light of the announcement by the Prime Minister on the 23rd March 2020, the Constitution has been reviewed to ensure that the Council is able to continue to operate and make the decisions needed.
- 2. The Government has recently introduced the Coronavirus Act 2020 [the Act] which amongst other things allows for meetings to be undertaken remotely. The introduction of this arrangement is helpful to assist councils in operating a democratic process during this crisis and with the current and ongoing need for

social distancing. The introduction of the Act is will require new ways of working by all members and officers and an appropriate technical solution to be implemented.

3. The Regulations are time limited and only apply to meetings held before 7 May 2021, the Government has indicated that further secondary legislation could be introduced to bring forward this date if social distancing rules are relaxed or removed.
4. Under the Local Government Act 1972 it was not possible to hold remote meetings. Regulation 6(a) and (b) now applies to remote meetings with any reference to “being in attendance” to include remote attendance. For a member to be in attendance under Regulation 5(2), the conditions in Regulation 5(3) must be met.
5. Regulation 5(1) is the main provision for holding remote meetings and allows for meetings to be held through “electronic, digital, virtual locations and telephone conferencing”. The definition is broad to enable the meetings to move from the Council’s Chamber to more than one virtual location, but leave the option of meeting in person (“at present in the same place”) once the restrictions are lifted so desired. The definition enables the meeting to be held at a Council building (if safe to do so), where the organiser is located, or an electronic or digital or virtual location, a web address or a telephone conference call number. Remote attendance counts for the purpose of the six-month rule. A dispensation can be given for absence for sickness or other reasons.
6. Regulation 5(5) overrides any procedure rules the Council has relating to the governance of meetings. Regulation 5(6) provides the Council with the flexibility to introduce other procedure rules in relation to voting, member and public access to meetings and documents, the remote access to the meetings by the press and public by electronic means. This enables the Council to match what facilities we have to the circumstances we find ourselves in.
7. The Regulations change the Local Government Act 1972 to enable meetings to be held remotely and for notices of meetings to be placed on the Council’s website. Further that publication of documents including agendas, minutes and supporting documents on the Council’s website satisfy the requirements of accessibility and publication. The requirement that meetings are held in public is satisfied by enabling the press and public access to remote meetings.
8. The Ministry of Housing Communities and Local Government has advised that the changes can be made immediately.

9. Some of the Regulations override the Council's Rules of Procedure, there are some that will need to be amended to make compatible with the new provisions.
10. Appendix D contains proposed changes to the Constitution's Rules of Procedure found at Part 4.
11. The Constitution is clear on the responsibilities of Committee's and is also clear on the delegations that are in place. The Constitution, at Appendix A delegations of emergency powers refers to section 40 Standing Orders that has provision for emergency decision making by the Chief Executive.
12. There is currently no provision within the Constitution for emergency situations whereby fewer Councillors are available to attend meetings to provide a democratic process for decision making outside of the current committee system structure.
13. This report recommends the creation of an Emergency Committee and that the Constitution is amended by adding in Chapter 3, paragraph 2.10 Emergency Committee (to meet on demand) with the terms of reference set out in Appendix A.
14. The Council has a committee system which, during an emergency situation such as the current world pandemic is increasingly difficult to support. Officers during the current pandemic are working to ensure that the most vulnerable are supported and that the Council can carry on its daily business as best as it can. At present the whole country must comply with social distancing and must work at home unless the nature of their role prevents this. There is lack of resources to be able to operate a full committee system at present, but there is a recognition that in order to have democratic decision making if there was a need for an important urgent decision to be made that would normally go to Council or one of its committees calling an Emergency Committee would be the most democratic method.

## **EMERGENCY COMMITTEE**

15. Appendix A contains a proposed Terms of Reference for the Emergency Committee, which would be convened should the Council be unable to meet in line with the current Constitution.
16. This Committee would take on the delegations of the key Committees as decided by the Chief Executive through consultation with the Leader and Opposition Leaders. The Executive Committees are Council, Policy, Resources

& Economic Development, Environment, Enforcement & Housing, Community & Health, Planning & Licensing and the audit/finance function of Audit & Scrutiny. An indicative Structure is set out in Appendix C.

17. The intention, where possible, is to still undertake separate Planning & Licensing and Audit & Scrutiny Committees when required and appropriate. This will be decided by the Chief Executive through consultation with the Leader. These powers can be in full or in part.
18. All members of the Emergency Committee will have undertaken the formal training required to sit on a Planning & Licensing Committee prior to the consideration of any item, relating to planning and licensing, being presented at this committee. At this current time it is extremely unlikely that the emergency committee will be required to make a planning, licensing or audit decision but to provide resilience for all eventualities, the committee has this function in the absence of being able to hold the individual committees.
19. The Emergency Committee will ensure that single points of failure are reduced and that the Council can continue to operate during this unprecedented situation.
20. It is important to note that the scrutiny role in the local authority is an important one, with the focus of this Committee being undertaken at the right time. The time for scrutiny in such unprecedented times will be to review the process after the COVID19 impact has reduced and enable a lesson learnt to be undertaken. The Chief Executive and the Monitoring Officer will also ensure that the Committee operates within its remit and that decisions made are appropriate.
21. The Monitoring Officer also has an important role to undertake at this time, to ensure that the decisions to convene and/or stand down the Committee are taken at the right time, and to also ensure that the Members of the Committee undertake their role following the Member Code of Conduct. The Monitoring Officer will be present at all meetings of the Committee and liaise with the Chief Executive when decisions are made. All members of the council will also have the ability to influence the decision to stand down the committee. This can be undertaken by at least a third of councillors writing to the Chief Executive and the Monitoring Officer requesting the committee stands down. If this action is taken then the reinstatement of the full committee structure will take place or an extraordinary council meeting can be called to debate any other emergency governance models required to enable the council to function lawfully.

22. The Emergency Committee will take on the decisions of the Committees that are suspended and follow the calendar of meetings in this regard. The Chief Executive in consultation with the Leader will make the initial recommendations of what Council business matters are to be brought to the Committee. The reports coming to this Committee will be assessed by the Monitoring Officer to ensure that the decisions being requested are urgent decisions that cannot be deferred or are not within the scheme of delegations to officers.
23. The Emergency Committee will meet as and when needed but will meet informally on a regular basis, if required, to provide key updates on the Council's approach to the crisis and its impact on the borough and the Council.
24. Each meeting will be called with five days' notice if practicable, all agendas, reports and documents will be published on the website, all decisions will be recorded and published as soon as practicable.
25. It is important to also clarify that the delegations within the Constitution that relate to individuals have the following further delegations should this be necessary:
  - Should the Emergency Committee Chair be unable to conduct his/her role, this will be delegated to the Vice Chair.
  - Should the Emergency Committee Chair/Vice Chair both be unable to conduct his/her roles, this will be delegated to the Chair of one of the Executive Committees.
  - Should an Executive Committee Chair be unable to conduct their role, they are able to delegate their functions to another Committee Chair or their Vice-Chair.
  - Should the Chief Executive be unable to conduct his/her role, this will be delegated firstly to the Chief Operating Officer or in his or her absence to a nominated Director.
  - Should a Director be unable to conduct their role, this will be delegated to a nominated member of the Extended Leadership Team.
  - Should the Monitoring Officer be unable to conduct his/her role, this will be delegated to a Deputy Monitoring Officer.
26. All such delegations shall be confirmed in writing to the officer who has received the delegation and copied to the Monitoring Officer.
27. In terms of Statutory Officers, there are Deputy Monitoring Officers and Deputy Section 151 Officers nominated to undertake these statutory roles in their

absence. For the avoidance of doubt these will be formally recorded in writing to the officer that has received the delegation.

## **COUNCILLOR ABSENCE**

28. Section 85(1) of the Local Government Act 1972 states: "...if a member of a local authority fails throughout a period of six consecutive months from the date of his last attendance to attend any meeting of the authority he shall, unless the failure was due to some reason approved by the authority before the expiry of that period, cease to be a member of the authority."
29. These unprecedented times mean that Councillors may not be able to physically attend meetings, or participate "remotely" for more than six months, either because they have already been absent due to illness or another reason, or because they will be unwell going forward, must self-isolate or undertake social distancing. For the local authority to be able to continue to function it is therefore proposed that the six-month rule is suspended and that this will be reviewed by the Monitoring Officer on a monthly basis and lifted at the correct time.

## **CALENDER OF MEETINGS**

30. In line with Part 4 Rules of Procedure, the Council at paragraph 2.1(r) is required to approve the programme of Ordinary meetings of the Council for the year, this is attached as Appendix B to this report.
31. The calendar of meetings (Appendix B) has been developed with the first 5 months of the year, until October 2020, only forecasting meetings of the Emergency, Planning & Licensing and Audit & Scrutiny Committees. The normal committee cycle is proposed to start in October at the earliest though due to the current situation this will be regularly reviewed by the Monitoring Officer. This ensures that business critical meetings continue and the decision making of the Council can continue in the most effective and efficient way during these unprecedented times.
32. The schedule for the Emergency Committee meetings are proposed as a monthly meeting. The committee will also meet as and when required to make

decisions to ensure the Council can operate to its full potential at this difficult time.

## **OPTIONS & RECOMMENDATION**

33. To maintain the current position is not recommended at this unprecedented time and this Emergency Committee can be convened to ensure that Council continues to function during this period of uncertainty.
34. The Council must abide by the legislative framework in force at the current time. Therefore, in order to comply with social distancing recommended on medical and scientific advice from the Government, that the amendments to the Rules of Procedure at Appendix D are recommended for approval.
35. To agree the Terms of Reference (Appendix A) for the Emergency Committee and to agree to include this within the Council Constitution at Chapter 3 paragraph 2.10.
36. To agree to suspend the six-month rule in relation to Members attending meetings of the Council and the Committees on which they serve, pursuant to Section 85 (1) of the Local Government Act 1972. This will be reviewed by the Monitoring Officer on a monthly basis.
37. To agree the proposed calendar of meetings for 2020/21 (Appendix B).
38. The Terms of Reference and the approach detailed within this report needs to be agreed to ensure that Constitution can be updated and to provide the Council with a route to continue to operate in unprecedented times.
39. This option enables the Council to fully discharge all of its powers, where necessary and appropriate, through a politically balanced committee.

## **CONSULTATION**

40. The Chief Executive has consulted with all Group Leaders ahead of this report being produced.

## **IMPLICATIONS**

### **FINANCIAL AND RISK IMPLICATIONS**

**Name/Title: Jacqueline Van Mellaerts, Director of Corporate Resources**

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41. Financial implications are not directly applicable to this report at this time. However, an uplift in expenditure on IT equipment may be required together with the risk that the the IT equipment will fail or not be able to support the capacity. Also, that the WIFI systems will not be able to sustain the meetings.
  
42. The purpose of the proposed Emergency Committee, with full powers, will enable the council to deliver all its financial, risk management and decision-making processes, if required, and where appropriate. Without the proposed Emergency Committee all Council decision making will need to be undertaken directly by the Chief Executive, as per the Constitution Standing Order 40 for emergency decision making. The establishment of this committee provides the opportunity of a fully democratic approach to decision making during an emergency situation but does recognise that it is not possible to involve all members of the Council directly in decision making during this type of period in time.
  
43. Risks, issues and financial implications are being monitored, recorded, managed and escalated on a daily basis and this will continue to as the current situation evolves.

### **LEGAL IMPLICATIONS**

**Name & Title: Amanda Julian, Director of Law and Governance**

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44. The Emergency Committee is not currently within the Council's Constitution and Council needs to agree to its inclusion to enable this to be taken forwards.
  
45. Legal implications are that the Council's Rules of Procedure do not allow the holding of remote meetings to enable the Council to move forward and carry out its democratic decision making the changes at Appendix D need to be agreed to ensure compliance with the Act and the Regulations.
  
46. As in this case the Coronavirus Act 2020 or in future any other emergency legislation comes into force the legal implications will be assessed and necessary steps taken to ensure the Council is compliant at time of the calling of the Emergency Committee either now or in the future. Officer Decisions will

be monitored and managed on a daily basis and this will continue as the current situation evolves. This would be the same principle in any future emergency situation where the Emergency Committee would be called.

47. All decisions of the Emergency Committee will be recorded and reported back to the next available Council meeting.
48. The meetings will need to be conducted so that members of the public understand that they will be recorded and will be conducted in compliance with the principles of public law.

### **ECONOMIC IMPLICATIONS**

**Name/Title: Phil Drane, Director of Planning and Economy**

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49. The economic implications are that if the council does not have the appropriate governance structure to assist decision making this could have a negative impact on the role the council plays in economic development of the borough. This will be specifically important in assisting the recovery stage of this International Health Crisis.
50. Without the ability to hold remote meetings the Council will be unable to make decisions that could affect the economic recovery and development of the district.

**Other Implications** (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Section 17 – Crime & Disorder, Sustainability, ICT.

51. Equality and Diversity all remote meetings must have the ability for those with protected characteristics to participate. Where possible the Council will seek to enable participation.
52. ICT there will be impacts on how to manage meetings remotely.

### **BACKGROUND PAPERS**

Coronavirus Act 2020: <http://www.legislation.gov.uk/ukpga/2020/7/contents/enacted>

The Local Authority and Police and Crime Panels (Coronavirus)(Flexibility of Local Authority and Police and Crime Panel Meetings)(England and Wales) Regulations 2020

<https://www.legislation.gov.uk/uksi/2020/392/contents/made>

Constitution:

<https://brentwood.moderngov.co.uk/ecCatDisplay.aspx?sch=doc&cat=13119&path=0>

## **APPENDICIES TO THIS REPORT**

Appendix A : Emergency Committee – Terms Of Reference

Appendix B : Calendar of Meetings - 2020/2021

Appendix C : Indicative Emergency Committee Structure

Appendix D: Council's Rules of Procedure