

Legal Viewpoint: Planning to meet the needs of the present

2 April 2020 by Victoria McKeegan



Who would have predicted that the entire planning community would become so closely acquainted with paragraph 39, schedule 12 of the Local Government Act 1972? Yet it is this provision, requiring any decision taken at a local authority meeting to be decided by a majority of those present and voting, which has been highlighted as integral to our mode of planning decision-making.

Of course, most planning decisions are delegated. But the most significant applications, those which stand to solve our housing crisis and those of most socio-economic import, are presided over by local planning committees. Why by committee? Because these applications are deemed to be of significance to the wider community and, therefore, appropriately subject to political control.

And why by those present and voting? Because, being political, the decision-making process should be transparent and subject to scrutiny. In theory, councillors could consider such applications, along with objections and representations in support, on the papers before casting a secret ballot. Far simpler and more efficient, you might say, but contrary to our mode of participatory planning.

Faced with decision-making by committee grinding to a halt and significant planning applications being log-jammed, the government has intervened. Section 78 of the Coronavirus Act includes a delegated power enabling the secretary of state to make regulations relating to local authority meetings. The relevant regulations were made on 2 April and come into force on 4 April. With numerous councils cancelling all committee meetings and closing offices, section 78 and the regulations open the door to virtual meetings. Importantly, they override any contrary provisions in local authority rulebooks.

We may see one of two responses from councils, or perhaps a combination. Indeed, a combined option is advocated in new Planning Officers Society (POS) guidance that encourages councils to allow virtual committees for major or

Councils could retain their existing delegation protocols and simply facilitate virtual committee meetings, relying on the government's tacit endorsement through the new regulations. These make clear that any reference in other legislation to local authority meetings is no longer limited to a meeting of persons being present in the same place and can now be met by members attending remotely, subject to conditions requiring them to be heard and, where practicable, seen.

This approach requires the most confidence in technology, in the ability to resource such committees and in the ability to ensure procedural fairness through virtual participation. It is understood that Westminster City Council and the Royal Borough of Windsor and Maidenhead intend to proceed by way of this "virtual status quo" in the near future. Others deem it unworkable.

Alternatively, as both Manchester City Council and - in the interim - Windsor and Maidenhead have already done, councils could cancel all committee meetings and direct that all decisions be taken under new delegated powers. This is perhaps the most straightforward solution from councils' perspectives. Yet it relies on reasoning which dictates that, in the present emergency, the priority is to take decisions, rather than taking decisions in accordance with an established understanding of who should take them and the participatory manner of doing so.

Elsewhere, a mix-and-match approach may emerge, with more decisions delegated but virtual committees for the most significant schemes as per the POS guidance or, alternatively, delegation to newly constituted sub-committees. For instance, in Brighton and Hove, decisions on major schemes will be delegated to a sub-committee of three councillors, one from each party, which, it seems, will meet in public. A similar approach is to be taken at Broxtowe Borough Council, with a sub-committee meeting virtually.

The various "delegation plus" models incorporate a democratic dimension, through differing degrees of committee member involvement, and the most controversial proposals may be deferred. However, do they nevertheless involve an unnecessary centralisation of power, and deprivation of public participation, if the virtual status quo is technologically sound and can be adequately resourced - at least for the majority of applications that would ordinarily go to committee? The government's chief planner expects the legislation allowing virtual meetings to enable planning committees to continue. For now, we must wait and see.

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