

DRAFT

Note: These Minutes will remain DRAFT until approved at the next meeting of the Committee

COUNCIL

MINUTES OF THE MEETING HELD ON WEDNESDAY, 29 APRIL 2020

Councillors Present: Adrian Abbs, Steve Ardagh-Walter, Peter Argyle, Phil Barnett, Jeff Beck, Dennis Benneyworth, Dominic Boeck, Graham Bridgman, Jeff Brooks, Jeff Cant, Hilary Cole, James Cole, Jeremy Cottam, Carlyne Culver, Lee Dillon, Lynne Doherty, Billy Drummond, Clive Hooker (Vice-Chairman), Gareth Hurley, Owen Jeffery, Rick Jones, Nassar Kessell, Alan Law, Tony Linden, Royce Longton, Ross Mackinnon, Alan Macro, Thomas Marino, David Marsh, Steve Masters, Andy Moore, Graham Pask (Chairman), Erik Pattenden, Claire Rowles, Garth Simpson, Richard Somner, Joanne Stewart, Martha Vickers, Tony Vickers, Andrew Williamson, Keith Woodhams and Howard Woollaston

Also Present: John Ashworth (Corporate Director - Environment), Nick Carter (Chief Executive), Sarah Clarke (Service Director (Strategy and Governance)), Tess Ethelston (Group Executive (Cons)), Kevin Griffin (Head of ICT & Corporate Support), Joseph Holmes (Executive Director - Resources), Olivia Lewis (Group Executive (Lib Dem)), Ian Pearson (Head of Education Service) and Shiraz Sheikh (Principal Solicitor), Stephen Chard (Principal Policy Officer), Moira Fraser (Democratic and Electoral Services Manager) and Phil Rumens (Digital Services Manager)

Apologies for inability to attend the meeting: Councillor Geoff Mayes and Andy Sharp

Councillor(s) Absent:

PART I

61. Welcome and Tribute

The Chairman welcomed everyone to West Berkshire Council's first ever remote meeting of Full Council.

Councillor Lee Dillon noted the sad passing of former Councillor Terry Port who had represented the Thatcham South Ward. He commented that he was grateful for the advice and support offered to him by Councillor Port when he was first elected. He would be remembered for many things but especially for the wealth of knowledge and expertise he had in relation to highways and health and safety matters. The Council asked that its condolences be passed on to Terry's friends and family.

62. Declarations of Interest

There were no declarations of interest received.

63. Remote Council Meetings

The Council considered a report (Agenda Item 3) which proposed a number of changes to the Council's Constitution to enable the Council to hold and effectively manage meetings held under The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panels Meetings) (England and Wales) Regulations 2020 which came into force on the 4th April 2020. The Regulations would cease to have effect on the 21st May 2021

The regulations removed the legal obligation to hold local authority meetings at a specified physical location, by permitting members and others attending the meeting to do so by way of 'remote attendance'.

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MOTION: Proposed by Councillor Lynne Doherty and seconded by Councillor Lee Dillon:
That the Council:

1. “approves the following changes to the Constitution insofar as they apply to Remote Council Meetings only:
 - (a) Any right given to a member of the public to speak at any Council meeting shall not apply to Remote Council Meetings. This right will be replaced with the ability to make written submissions.
 - (b) Written submissions that replace the right of a member of the public to speak for up to five minutes, shall be limited to a written submission of no more than 500 words. (This limit shall be applied pro rata to any different time limit detailed within the Constitution.) Written submissions must be submitted to the Council no later than midday, two days before the meeting.
 - (c) Where practicable, written submissions made as an alternative to a previous right to address a Committee will be read aloud at the Remote Council Meeting. Where multiple parties make written submissions, these will all be made available to the Members of the Committee, but it will not be appropriate to read all aloud. In such circumstances, an officer will provide a verbal summary for the Remote Council Meeting of the issues raised.
 - (d) Where a member of the public has the right to ask a question at a meeting of the Council, they will continue to have the right to ask the question but that will be done in writing only. Members of the public will have no right to ask a supplementary question during a Remote Council Meeting.
 - (e) The Chairman of any meeting may determine to provide written answers only to questions submitted by members of the public. However, questions submitted to Remote Council Meetings and the responses provided will be published in full.
 - (f) Members of the public will have no right to present a Petition during a Remote Council Meeting.
2. Any statutory right for a person other than a Member or Officer of the Council to attend, and/or speak at, and/or raise verbal questions at, a Remote Council Meeting shall not be affected by this Resolution.
3. The Monitoring Officer is authorised to publish a statement setting out the effect of this Resolution in the Constitution and in any other place considered necessary to bring it to the attention of anyone affected as she deems fit.”

Councillor Lynne Doherty, in introducing the item, commented that these were exceptional times and she thanked everyone for their contributions to maintaining social distancing. She noted that it was this that was the driver behind the paper being presented to Members that evening. Regulations had been enacted and the Council had to adapt its procedures temporarily to accord with them. She believed that these proposals were the best solution to continuing open and transparent decision making at the Council. The proposals were not seeking to remove public engagement at meetings they were merely replacing the opportunity to speak with the ability to make written submissions. The proposals were designed to minimise the risk of challenge of the Council’s decisions arising from the way the legislation had been drafted. The proposals would be kept under review and the Council would revert to the existing procedures once the legislation and circumstances permitted.

Councillor Carolyne Culver advised that she would like to table the following amendment:
The Council

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“To continue to allow the same speaking rights for members of the public that are permitted at physical face to face meetings, namely the verbal presentation of petitions, verbally asking public questions and supplementary questions at Executive and receiving verbal answers, and speaking at Planning Committees and being questioned by Members. Remove verbal public speaking rights from Full Council only (as a temporary measure during the emergency period only) to avoid the risk that lengthy public questions push the meeting over time, and deal with public questions to Full Council in writing instead.”

The Monitoring Officer Monitoring explained that in accordance with paragraph 4.13.7 (Amendments to Motions) of the Constitution an amendment to a Motion had to be relevant to the Motion and could not negate the Motion or introduce a new subject matter. As the effect of the amendment proposed by Councillor Culver would be to negate the motion it was invalid and therefore could not be accepted at this meeting.

The Chairman stated that Councillor Culver could however continue to the address the Council on the motion that had been proposed by Councillor Doherty.

Councillor Culver stated that public scrutiny was more important now than ever before. She noted the technical issues referred to in paragraph 5.6 of the report but believed that these could be overcome. She stated that the Council would be aware in advance of meetings which members of the public were permitted to speak and could provide those individuals with the same types of meeting log in details which were issued to Members. She felt that it was essential that Members of Planning Committees could question the relevant parties as without this aspect of the meeting they would have insufficient information to base a decision on.

In her opinion these proposals sought to undermine democracy and were an attempt to exploit the current situation. She would however have to abstain when it came to voting. If the motion was lost all decision making would revert to the Chief Executive under his emergency powers and she could not support that outcome either.

Councillor David Marsh raised a point of order. He asked the Monitoring Officer to reconsider her ruling on the amendment as in his opinion it did not negate the motion in its entirety only in part. The proposal recommended that the changes in respect of full Council be retained.

The Monitoring Officer stated that the principles applied to all public meetings and could not be separated in the way proposed. She remained of the opinion that the proposal would negate the motion and could therefore not be tabled.

Councillor Adrian Abbs commented that he was uncomfortable with the removal of speaking rights for the public. He believed that the technical issues were not insurmountable and he was concerned about removing the right of the public to speak on the off chance that the quorum requirements were not met. He therefore felt that technical solutions should continue to be sought and this proposal should be kept under review.

Councillor James Cole was concerned about the impact this proposal could have on the residents of his ward. He noted that Licensing Regulations required public speaking rights to be maintained at hearings and he felt that if this could be achieved at those meetings the same procedures could be applied to planning meetings. He accepted that

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there were fewer licensing hearings than planning meetings and that the risk attached to these meetings was also lower. However if the procedures could be put in place for one they could be put in place for the other. He was concerned that this proposal would exacerbate the risk of challenge of planning decisions.

Councillor Claire Rowles supported Councillor James Coles' argument. She felt that it was essential to have the voices of residents heard at planning meetings. She believed that the right of these residents to be heard outweighed the risk of potential challenges.

Councillor Ross Mackinnon stated that the central issue was set out in paragraph 5.6 which explained that the legislation as drafted required that a Member be able to hear and be heard by any party who was entitled to speak at a meeting. This meant that if the technology of an individual in this category failed, and they were unable to hear the Members or to make themselves heard, the Members would be deemed to be absent. This meant that the Council's decision making was reliant on residents' technical capability. He noted that licensing hearings took place less frequently and were less susceptible to appeal. He believed that the proposal was the best solution to address the matters at hand.

Councillor Steve Ardagh-Walter noted that meetings could be maliciously disrupted and he believed that these proposals minimised that risk. This was the right approach in these difficult times.

Councillor Rick Jones stated that he supported the approach being proposed but reminded Members that the Council would continue to work behind the scenes to seek to get the regulations changed.

Councillor Tony Vickers sought reassurance that the proposal would not continue to be adopted once the current situation was resolved. West Berkshire Council had adopted a gold standard approach to public participation in planning meetings and he would not like to see this diminished.

Councillor Steve Masters was concerned about the impact of the proposal on democracy. He did not believe that there were any technical barriers that would prevent the public from participating in the same way as Members were able to. Disruptive attendees could be muted or removed from the meeting by the person acting as the host. He was of the opinion that the proposal would erode public confidence in the Council's democratic processes.

Councillor Alan Law commented that the concerns were due to the regulations being poorly drafted which resulted in practical problems which the Council had to overcome. The regulations, as drafted, were open to exploitation and could result in more decisions being challenged. Parties were not being prevented from participating in meetings oral submissions were merely being replaced with written ones. The only difference was that the Committee would no longer be able to ask questions of them. This was a small price to pay in order to continue to allow democracy to continue to function.

Councillor Graham Bridgman commented that he had scrutinised the regulations. The view of the Monitoring Officer as put forward in the paper was supported by independent legal opinion. He reassured Councillor Vickers that the proposals related directly to the Regulations. Once they ceased to be in effect remote meetings would need to cease too.

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Councillor Bridgman stated that the issue was not dealing with disruptive attendees or even the technical issues Members had raised. The issue was that there was a legal hole in the regulations. The Council permitted public speaking at some meetings where there was no requirement for it to do so. The Regulations were drafted in a manner that meant the attendance of Members at a meeting could be impacted by third parties. If a Member could not hear or be heard by any member of the public entitled to speak at the meeting, the Member would be deemed not to be in attendance at the meeting. As a consequence then no valid decision could be made as the Members would be deemed to be absent from the meeting.

Licensing differed from planning in that the legislation pertaining to licensing included requirements to permit public speaking and the Council would therefore have to continue to meet these requirements.

Councillor Hilary Cole acknowledged that planning was an emotive issue. The proposals would mean that Members would be able to continue to be involved in planning decision making and that the proposals would make that decision making as transparent as possible. The public could continue to participate but in a way that would reduce the risk of challenge.

Councillor Lee Dillon commented that there were two areas that had been missing from the debate. The first related to the proportionality of what was being proposed and the second related to the role of individual Members in the democratic process. This was an unprecedented situation. In his opinion what was being proposed was proportionate provided that it was time limited. Members were democratically elected and these proposals would continue to allow them to participate in the decision making process. Public participation should be reviewed as legislation and technology permitted. Learning from licensing hearings could be built on.

He noted that the proposals still allowed for electronic petitions which was a sensible way forward given that social distancing would preclude the ability to collect signatures on a paper petition in any event.

He supported the proposals as he believed that they would protect the Council from challenge and in so doing protect residents who would, indirectly, be meeting the costs of any legal challenges.

Councillor Doherty thanked Councillor Dillon for his support. It had not been easy working in these unprecedented times and a lot of thought had gone into retaining democracy whilst working within the legislative requirements. She believed that the solution being offered provided the best result for the District's residents. The proposals would be kept under review and if any changes were needed they would be brought back to Council for consideration. She urged all Members to support the proposal which would ensure that they could continue to participate in the Council's democratic processes.

In accordance with Procedure Rule 4.17.3 it was requisitioned that the voting on the Amendment be recorded. The names of those Members voting for, against and abstaining were read to the Council as follows:

FOR the Motion:

Councillors: Adrian Abbs, Steve Ardagh-Walter, Peter Argyle, Phil Barnett, Jeff Beck, Dennis Benneyworth, Dominic Boeck, Graham Bridgman, Jeff Brooks, Jeff Cant, Hilary

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Cole, Jeremy Cottam, Lee Dillon, Lynne Doherty, Billy Drummond, Clive Hooker, Gareth Hurley, Owen Jeffery, Rick Jones, Nassar Kessell, Alan Law, Tony Linden, Royce Longton, Ross Mackinnon, Alan Macro, Tom Marino, Andy Moore, Graham Pask, Erik Pattenden, Garth Simpson, Richard Somner, Jo Stewart, Martha Vickers, Tony Vickers, Andy Williamson, Keith Woodhams, Howard Woollaston (37)

AGAINST the Motion:

None (0)

ABSTAINED:

Councillors: James Cole, Carolyn Culver, Steve Masters, David Marsh Claire Rowles (5)

The Motion was put to the meeting and duly **CARRIED**.

(The meeting commenced at 4.00 pm and closed at 5.05 pm)

CHAIRMAN

Date of Signature