


URGENT DECISION FORM



TO BE UPLOADED ON TO THE INTERNET BY DEMOCRATIC SERVICES

Date: 24/03/2020	Ref No: BGI C19/0003	
Type of Decision:		
Cabinet Decision		Council Decision
Key		x
Non-Key		
Subject matter:		
Planning Control Committee - Application Decision Making Due to Coronavirus / Covid-19 Restrictions		
Reason for Urgency:		
Statutory Function and need for on-going decision making – Planning Decisions		
Freedom of Information Status		
Equality Impact Assessment		
[Does this decision change policy, procedure or working practice or negatively impact on a group of people? If yes – complete EIA and summarise issues identified and recommendations – forward EIA to Corporate HR]	YES	
Decision taken:		
Decision taken by:	Signature:	Date:
Chief/Senior Officer/Cabinet Chair		27.3.20
After consultation with:		
Cabinet Member (if a Key Decision) or Chair or Lead Member (as appropriate)	YES – CHAIR OF PCC / LEADER OF THE COUNCIL	
If it is a Key Decision, the Chair of Scrutiny Committee to agree that the decision cannot be deferred		

<p>Opposition Leader or nominated spokesperson (Council Decision) or</p> <p>Leader or Majority Group Member on Overview and Scrutiny Committee (if a Key Decision) to agree that the decision cannot be deferred</p>		
<p>Leader of second largest Opposition Group (if a Key/Council Decision) to agree that the decision cannot be deferred</p>		

Background

Planning Control Committee - Application Decision Making Due to Coronavirus / Covid-19 Restrictions

Bury Council's Planning/Development Management Section currently receives circa 1200 planning applications per year.

The Council's constitution is currently written to enable planning decisions to be issued in a reasonable and timely manner by a set of criteria that determines which applications are to be considered by the Council's Planning Control Committee and which are delegated decisions to be made by the Director for Business, Growth and Infrastructure.

Presently, some 93% of decisions are delegated to the Director and the remaining applications are made by the Planning Control Committee. This is consistent with the Government's view on the levels of delegated decisions.

The Ministry of Housing, Communities and Local Government (MHCLG) provides guidance on how the decision making process should be done so as to ensure that most applications that are straightforward are decided as early as possible thus to enable the economy to maintain momentum. Those applications that are considered to be place making and have more widespread public interest, are heard and decided in public meetings made by the Council's Planning Control Committee. The Local Government Act and the Council's constitution require meeting of this nature to be held in person and in public. There is no right to speak or address the Committee, but Bury Council chooses to permit it.

The United Kingdom has been hit by the worldwide pandemic of Coronavirus/Covid-19 which has seen over the last few weeks and in particular days, restrictions being introduced by the Government on social interaction, which is seen as a key way to slow how the highly contagious infection spreads.

The issue therefore arises on how the planning process can still continue to function at all levels and this paper seeks to pay particular attention to the Committee decision making process.

Current Government Restrictions Affecting Planning Decision Making

The situation in the UK has been changing quickly in the most recent days. The latest guidance found on <https://www.gov.uk/guidance/coronavirus-covid-19-information-for-the-public> that has direct implications upon public decision making processes are:

- Broad Advice
 - Only go outside for food, health reasons or work (but only if you cannot work from home)
 - Stay 2 metres (6ft) away from other people
 - Self isolation for certain groups and following recent illnesses
- Stopping public gatherings
 - To make sure people are staying at home and apart from each other, the Government is also stopping all public gatherings of more than two people.

- Exceptions for very limited purposes:
 - where the gathering is of a group of people who live together – this means that a parent can, for example, take their children to the shops if there is no option to leave them at home
 - where the gathering is essential for work purposes - but workers should try to minimise all meetings and other gatherings in the workplace

Ministry of Housing, Communities and Local Government Advice/Response 24 March 2020

- It is important that authorities continue to provide the best service possible in these stretching times and prioritise decision-making to ensure the planning system continues to function, especially where this will support the local economy.
- We ask you to take an innovative approach, using all options available to you to continue your service. We recognise that face-to-face events and meetings may have to be cancelled but we encourage you to explore every opportunity to use technology to ensure that discussions and consultations can go ahead. We also encourage you to consider delegating committee decisions where appropriate. The Government has confirmed that it will introduce legislation to allow council committee meetings to be held virtually for a temporary period, which we expect will allow planning committees to continue.
- We encourage you to be pragmatic and continue, as much as possible, to work proactively with applicants and others, where necessary agreeing extended periods for making decisions.

From 4 April 2020

- <https://www.gov.uk/government/news/councils-given-new-powers-to-hold-public-meetings-remotely>
- Local Government Secretary confirms local authorities can hold public meetings remotely by video or telephone;
- Government removes requirement for physical attendance at meetings;
- Public will still have access to public meetings through remote means;
- Change ensures effective local decision making and transparency during the national effort to fight the coronavirus pandemic.

The Planning Inspectorate (PINS) 25th March 2020

Appeals can still be made for non-determination of planning applications and proposals, appeals against decisions issued and conditions imposed on consents and permissions. PINS have restricted submission to on line only and existing appeal hearings and site visits have been cancelled and will be rescheduled.

Planning Officer's Society

This is a professional group represented by Planners across all sectors. The depth of expertise has been pooled to put together a practical solution to all the angles of decision making for the Development Management process and can be found using this link <https://www.planningofficers.org.uk/news/dm-decision-making--covid-19>. The report is attached for information and provides a good guide to the options available under the current difficult times.

Bury Council's Issues and Options

Issues

24th March PCC was postponed due to the rapid increase in precautionary and mandatory measures required by the Government at the time. The current stated period will be reviewed broadly on 13th April 2020. The next PCC meeting is scheduled for 21st April 2020. Indications are that restrictions will be maintained in some way but as yet there is no firm outline or proposal of what this would be. There is therefore uncertainty.

Statute has not changed to remove timeframe restrictions which heavily controls the planning process be that on publicity or determination dates. Planning decisions are required to be made within statutory timescales (8/13 weeks). Risks of not doing this - Appeal for non-determination and costs claim / LPA "designated" if numbers fall below Government threshold / have to re-pay fee after 26 weeks.

PCC meetings are normally publicly attended. However, high numbers of people that normally attend would mean that social distancing would not be achievable for either the public or Members and Officers. In any event, this would be classed as a gathering, which currently is prohibited.

The agenda requires a two week time for report writing, production and publication. The agenda must therefore be ready and publicised no later than 13th April 2020.

Postponement – 5 items have already been delayed. Whilst applicants and agents were accepting of this one off, the Council's Local Planning Authority must have provisions in place so that postponement does not become indefinite or without end.

Streaming – The Council Chamber has web streaming capabilities for full Council meetings and this is used for each meeting. The Government have issued primary legislation to permit virtual meetings, but secondary legislation is not yet in place to permit the intentions to come in to force under regulatory controls. Irrespective of the streaming capabilities, the meeting may involve some Members who are in the at risk group and may exclude Members or staff from attending due to isolation or shielding reasons. The Council does not have streaming/conference capabilities to all would need to be involved.

Executive/Extraordinary Emergency Provisions – The Council's constitution says *"In cases of emergency, a Chief Officer after consultation with the Chair of the appropriate Committee or Leader of the Council and with the relevant Opposition Spokesperson and leader of the second largest opposition group, shall be empowered to make urgent decisions when necessary on Council Functions relevant to their service area. Such urgent decisions shall be processed through the Chief Executive and shall be submitted to the appropriate Committee for information."*

This obviously relates to exceptional circumstances which are prevalent at the moment. In very exceptional and extreme circumstances, where decisions are required to be taken, this can be done through agreement between the parties described.

Following this process, the decisions can still be made on planning applications without public or Member and staff health risk. Public responses would not be precluded by still producing the agenda and publicising it as normal. The public can still make written representations up to the point of determination and already received written comments are included in the report in any event. PCC Members would have a working week to provide written comments on the items, which can be collated and feed in to the Executive decision making process.

Legal Challenge - All decisions wherever they are made are subject to potential legal challenge through Judicial Review. It could not be reasonably argued that the current pandemic has not given rise to the need for extraordinary actions and as such all of the above matters would always be subject to challenge.

Applicants - still have the right of appeal if a decision has not been issued within the statutory time or outside any agreed timeframe. Decisions still are required to be taken within the 8,13 or 16 week period and in any event within 26 weeks unless through extended times as agreed, otherwise fees can be requested to be refunded.

Third Parties – Objections and support can be provided to the LPA on applications and are duly reported. These are an important part of the planning process and weigh in the planning balance where they make material planning representations.

Options: Risks/Benefits

1. Need to consider whether it is appropriate/necessary to use emergency powers if the Council can lawfully hold meetings virtually. However, IT is clearly not in place at the moment and the PCC meeting is too close to facilitate delivery of this for the April meeting.
2. Wait until PCC meetings can be safely held again and try to agree extensions of time. This is better for public engagement/openness but not recommended because Government advice is to prioritise decision-making. It could potentially be 6 months or so delay, which is an unacceptable delay for applicants.
3. Coronavirus legislation is now in force with the necessary secondary legislation and hold virtual PCC meetings – The legislation is permits remote meeting and this would maintain transparency / openness. However, the Council is not ready IT-wise but is working upon innovation to deliver

this. For clarity, this would not be live-streaming but a video/telephone conference.

4. Use urgency powers – Lacks openness/transparency and to a degree is undemocratic. However, The Council could look at going further than only consulting the Chair - could ask all PCC members for views and contact objectors for a written version of what they would have said in their address to PCC. This option could be used in the interim and cover the April meeting and subsequent for an interim **six month period** and be reviewed in the meantime whereby, discussions between the Chief Executive, Chair, IT, Planning and Democratic Services seek to deliver the virtual solution as soon as possible in time for when secondary legislation is in place.

Consultation

The Chair of the Planning Control Committee was consulted whom discussed the matter with the Leader of the Council. The response was as follows:

"Having read the report "Planning Control Committee - Application Decision Making Due to Coronavirus / Covid-19 Restrictions" and the accompanying guidance for planners and information from the government, I agree with recommendation 4 of the report.

Emergency powers, with the suggested adjustments, should be used under the proviso that a virtual solution is sought as soon as is reasonable, so that members of the planning control committee can scrutinise applications and members of the public can see that the legally defined processes have been followed.

This decision is made from a purely legal perspective following changes to government legislation to try to facilitate "business as usual" during this global pandemic.

I do however wish to place on record my disagreement with the national guidance that planning should try to continue and would urge national government to temporarily remove the time limits placed on decisions for planning departments meaning that these major decisions can be deferred till such a time as the emergency has abated. Although planning and economic development are very important issues, at this time of global crisis I believe that planning decisions should not be placed in the same category of emergency response as health care. This however is a personal perspective and does not affect my decision as chair of planning to concur with recommendation 4 of the report."

Recommendation

Option 4 be carried out as the current circumstances lead to the most appropriate means of ensuring that the planning process continues, with as much inclusivity as can be currently delivered. The option includes the use of moving to virtual meetings when IT permits. The use of this power is suggested for a limited period only and reversion to a more open process for Committee decision making when the Council are able to. This process closely follows that of the Planning Officer's Society recommendations (page 6) and a move to Virtual meetings (page 7 onwards).

David Marno
Head of Development Management
27/3/2020