

# Public Document Pack



## Agenda Supplement 1

Dear Councillor

### **ORDINARY COUNCIL - TUESDAY, 24TH MARCH, 2015**

I am now able to enclose, for consideration on Tuesday, 24th March, 2015 meeting of the Ordinary Council, the following reports that were unavailable when the agenda was printed.

<b>Agenda No</b>	<b>Item</b>
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3.	<b><u>Minutes of the previous meetings</u> (Pages 3 - 10)</b>
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Minutes for the 4 March 2015 Ordinary Council meeting are now available.

6.	<b><u>Local Development Plan - Strategic Growth Consultation - Initial Findings</u> (Pages 11 - 14)</b>
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Report of the Head of Planning.

7.	<b><u>Letter to the Secretary of State regarding the Brentwood Local Development Plan</u> (Pages 15 - 18)</b>
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Report of the Head of Planning.

8.	<b><u>Constitution (Revision)</u> (Pages 19 - 304)</b>
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Appendix A is now available and paper copies will be provided on request.

11.	<b><u>Enforcement Plan Adoption Report</u> (Pages 305 - 340)</b>
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Report of the Head of Planning.

12. **Assignment of Strategic Safeguarding Lead and Member Champion** (Pages 341 - 344)

Report of the Chief Executive.

13. **Elections - Appointment of Registration Officer and Returning Officer** (Pages 345 - 348)

Report of the Chief Executive.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G. B. Smith', with a long horizontal flourish underneath.

Chief Executive

Encs

19/03/15



## Minutes

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**Ordinary Council  
Wednesday, 4th March, 2015**

### Attendance

Cllr Mrs Davies (Mayor)	Cllr Le-Surf
Cllr Keeble (Deputy Mayor)	Cllr Lloyd
Cllr Aspinell	Cllr McCheyne
Cllr Baker	Cllr Mrs McKinlay
Cllr Barrett	Cllr Morrissey
Cllr Carter	Cllr Mrs Murphy
Cllr Chilvers	Cllr Mynott
Cllr Clark	Cllr Dr Naylor
Cllr Cloke	Cllr Newberry
Cllr Mrs Cohen	Cllr Parker
Cllr Mrs Coe	Cllr Quirk
Cllr Mrs Henwood	Cllr Reed
Cllr Hirst	Cllr Russell
Cllr Mrs Hones	Cllr Ms Sanders
Cllr Hossack	Cllr Sapwell
Cllr Mrs Hubbard	Cllr Sleep
Cllr Kendall	Cllr Mrs Squirrel
Cllr Kerlake	Cllr Tee

### Apologies

Cllr Faragher

### Officers Present

Ashley Culverwell	Head of Borough Health Safety and Localism
Graham Farrant	Chief Executive
Gordon Glenday	Head of Planning & Development
Chris Leslie	Financial Services Manager
Roy Ormsby	Head of Street Scene
John Parling	Strategic Asset Manager
Chris Potter	Monitoring Officer & Head of Support Service
Phil Ruck	Contract & Corporate Projects Manager
Jean Sharp	Governance and Member Support Officer
Steve Summers	Head of Customer Services

#### 476. Apologies for Absence

Apologies were received from Cllr Faragher.

The Mayor introduced the Council's new Chief Executive, Graham Farrant. Mr Farrant advised Members that Ms Ireland, Director of Strategy and Corporate Services and Section 151 Officer, had brought forward her date of resignation to 4 March 2015.

#### 477. Variation in the order of the agenda

At the request of Cllr Mrs McKinlay, the Mayor proposed and it was **RESOLVED** that Item 6 – Council Tax 2015/16 - be considered as the first item of business.

#### 478. Council Tax 2015/16

Members were reminded that the Council was the billing authority for the Borough of Brentwood and was required to set a Council Tax that would not only cover its own requirements, but also those of Essex County Council, Police and Crime Commissioner, Fire Authority and the Parish Councils.

The precept requirements for 2015/16 were:-

	2014/15 £	2015/16 £
Brentwood Borough Council	5,194,416	5,238,503
Essex County Council	33,573,402	33,858,348
Police and Crime Commissioner	4,456,991	4,584,546
Fire Authority	2,051,940	2,069,354
Parishes	301,626	361,474

A schedule of the Parish Precepts was attached to the report.

**Cllr Lloyd MOVED and Cllr Aspinell SECONDED the recommendations in the report and it was RESOLVED UNANIMOUSLY that:**

- 1. The Council approve the formal Council Tax resolution contained in Appendix 1 to the report.**
- 2. It be noted that for the year 2015/16 Essex County Council, Essex Police and Crime Commissioner and Essex Fire Authority had stated the following in precepts issued to the Council, in accordance with Section 40 of the Local Government Finance Act 1992 ("the Act") for each of the categories of dwellings (valuation band) shown below:**

Valuation Band	Essex County Council £	Essex Police and Crime Commissioner £	Essex Fire Authority £
A	724.50	98.10	44.28
B	845.25	114.45	51.66
C	966.00	130.80	59.04
D	1,086.75	147.15	66.42
E	1,328.25	179.85	81.18
F	1,569.75	212.55	95.94
G	1,811.25	245.25	110.70
H	2,173.50	294.30	132.84

3. That having calculated the aggregate in each case of the amounts calculated by the Council, in accordance with Section 36(1) of the Act, as the amounts to be taken into account for the year in respect of categories of dwellings listed in different valuation bands and the amounts in 2.2 above, the Council, in accordance with Section 40 of the Act, hereby sets the amounts below as the amounts of Council Tax for the year 2015/16 for each of the categories of dwellings shown:

	Band A £	Band B £	Band C £	Band D £	Band E £	Band F £	Band G £	Band H £
Blackmore	999.64	1,166.25	1,332.86	1,499.46	1,832.67	2,165.89	2,499.10	2,998.92
Doddinghurst	1,009.12	1,177.32	1,345.50	1,513.69	1,850.06	2,186.44	2,522.81	3,027.38
Herongate	1,001.64	1,168.58	1,335.52	1,502.46	1,836.34	2,170.22	2,504.10	3,004.92
Ingatestone and Fryerning	1,018.97	1,188.81	1,358.63	1,528.46	1,868.11	2,207.78	2,547.43	3,056.92
Kelvedon	998.32	1,164.71	1,331.10	1,497.48	1,830.25	2,163.03	2,495.80	2,994.96
Mountnessing	1,002.05	1,169.07	1,336.07	1,503.08	1,837.09	2,171.12	2,505.13	3,006.16
Navestock	996.97	1,163.14	1,329.30	1,495.46	1,827.78	2,160.11	2,492.43	2,990.92
Stondon Massey	1,002.30	1,169.36	1,336.41	1,503.46	1,837.56	2,171.67	2,505.76	3,006.92
West Horndon	1,012.20	1,180.90	1,349.60	1,518.30	1,855.70	2,193.10	2,530.50	3,036.60
Unparished	978.97	1,142.14	1,305.30	1,468.46	1,794.78	2,121.11	2,447.43	2,936.92

## REASON FOR DECISION

The Council had a legal requirement to set the Council Tax for its area by 11 March 2015.

**479. Medium Term Financial Plan (General Fund) 2015/16 - 2017/18, Treasury Management Strategy Statement 2015/16 and Capital Programme 2015/16 - 2017/18**

The Mayor proposed that item 2 – Medium Term Financial Plan (General fund) 2015/16 – 2017/18, item 4 – Treasury Management Strategy Statement 2015/16 and item 5 – Capital Programme 2015/16 – 2017/18 be considered en bloc.

Cllr Mrs McKinlay advised that a figure included in the Conservative Group's proposed amendment to the Medium Term Financial Plan (General Fund) 2015/16 – 2017/18 had been validated on several occasions by the Section 151 Officer (Ms Ireland) but had been subsequently identified as an error shortly before the deadline for submission of amendments.

The Section 151 officer present (Mr Leslie) advised that figures included within the reports before Members were robust and fit for Members to make a decision.

**Cllr Mrs McKinlay MOVED and Cllr Hirst SECONDED that items 2-5 be deferred to a future meeting to allow an independent assessment to take place of the figures in the reports before Members.**

**Following a discussion a vote was taken on a show of hands and the MOTION was LOST.**

Cllr Mrs McKinlay advised that the Conservative Group's proposed amendment, which had been circulated to Members, would not be put forward.

**Cllr Lloyd MOVED and Cllr Aspinell SECONDED the recommendations in items 2, 4 and 5 en bloc and following a full discussion, in accordance with Rule 9.6 of the Council's procedure rules, a recorded vote was taken since the decision related to the budget.**

Cllr Cloke left the Chamber during voting.

For: Cllrs Aspinell, Baker, Barrett, Carter, Chilvers, Clark, Mrs Cohen, Mrs Davies, Mrs Hubbard, Keeble, Kendall, Le-Surf, Lloyd, Morrissey, Mynott, Newberry, Quirk, Sapwell, and Mrs Squirrell (19)

Against: Cllrs Mrs Coe, Mrs Henwood, Hirst, Mrs Hones, Hossack, Kerlake, McCheyne, Mrs McKinlay, Mrs Murphy, Dr Naylor, Parker, Reed, Russell, Ms Sanders, Sleep and Tee (16)

Abstain: 0

**The MOTION was CARRIED and it was RESOLVED as follows:**

In relation to Item 2 - Medium Term Financial Plan (General Fund) 2015/16 – 2017/18: the report set out the key financial management principles and budget assumptions which were used as the framework for the detailed budget setting process. This would ensure that the Council's resources were managed effectively to meet its statutory responsibilities and delivered the priorities of the Council over the medium term.

**RESOLVED:**

- 1. To note the key assumptions that underpin the Medium Term Financial Plan and the associated risks.**
- 2. To note the projected outturn of an estimated deficit of £17,000 for 2014/15.**
- 3. To approve the spending requirement for 2015/16 as shown in the table at para 4.38 which includes:**
  - 3.1 The sum of £163,850 for new developments**
  - 3.2 The sum of £545,000 for anticipated savings**
  - 3.3 The sum of £361,634 to be taken from the Working Balance**
  - 3.4 The sum of £350,000 to be earmarked for the WHW Development.**
- 4. To approve the Section 151 Officer's Assurance Statement on the robustness of the estimates and adequacy of the reserves.**
- 5. That regular reports are presented to Finance & Resources Committee on the progress on delivery of the savings.**

**REASON FOR DECISION:**

To ensure the Council's resources were managed effectively to meet its statutory responsibilities and deliver the priorities of the Council over the medium term.

In relation to Item 4 – Treasury Management Strategy Statement 2015/16 which also outlined associated Prudential Indicators, it was RESOLVED:

- 1. That the Treasury Management Strategy and Prudential Indicators for 2015/16 – 2017/18 be approved.**
- 2. That the Minimum Revenue Provision (MRP) Statement be approved.**

- 3. That the framework and criteria for determining counterparties and the Schedule of Approved Bodies for Investment be approved.**

#### **REASON FOR DECISION**

The Local Government Act 2003 required the Council to adopt the CIPFA Prudential Code and produce Prudential Indicators.

In relation to Item 5 – Capital Programme 2015/16 – 2017/18 the report regarding which considered the Capital Programme and supporting strategy for the period 2015/16 - 2017/18 it was RESOLVED:

- 1. To approve the proposed Capital Programme and funding totalling £21.5 million, for 2015/16 – 2017/18.**

#### **REASON FOR DECISION**

The Council was required to approve the Capital Programme as part of the Budget and Policy Framework.

#### **480. Medium Term Financial Plan (Housing Revenue Account) 2015/16 - 2017/18**

The report before Members considered the Medium Term Housing Revenue Account (HRA) budget.

The report included results of the tenant consultation, the consideration of the Housing and Health Committee and the recommendation of the Finance and Resource Committee concerning the proposed level of rent increase for 2015/16.

**Cllr Carter MOVED and Cllr Mrs Davies SECONDED the recommendations within the report and officers and Tenants Talkback were thanked for their assistance and support in preparation of the Medium Term HRA Budget.**

**Following a discussion, a vote was taken on a show of hands and it was RESOLVED:**

- 1. That the Council approves a level of rent increase for 2015/16 based on the Government formula of CPI + 1% per week, for all rents as detailed in the report.**
- 2. That the Council agrees to freeze the proposed Service Charges for 2015/16 for tenants, however any decrease to service charges, will be passed onto the tenant.**



3. **That the Council agrees that Leaseholder Service Charges be calculated in line with the current reconciliation policy.**
4. **That the Council agrees to applying the formula rent to all new tenancies from April 2015/16.**
5. **To approve the Section 151 Officer's Assurance Statement on the robustness of the estimates and adequacy of the reserves.**

#### **REASON FOR DECISION**

1. Effective financial management underpinned all of the priorities for the Council.
2. The Council was required to compile a budget which collated all the income and expenditure relating to the Council's housing stock. The Council was also required to agree the rent levels and notify tenants of any increases.

#### **481. Urgent Business**

There were no items of urgent business.

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**24 March 2015**

**Ordinary Council**

**Strategic Growth Options Consultation: Initial Findings Presentation**

*Report of:* Gordon Glenday, Head of Planning

*Wards Affected:* All

*This report is:* Public

**1. Executive Summary**

- 1.1 As part of preparing its new Local Plan, the Council agreed to consult on Strategic Growth Options at the meeting of Ordinary Council on 10 December 2014.
- 1.2 The Strategic Growth Options Consultation took place for six weeks until 17 February 2015. A summary of some of the initial findings from representations input onto the Council's consultation software so far are to be presented to Members in order to share information as soon as possible.

**2. Recommendation**

- 2.1 That Members note the initial findings so far and await more detailed analysis as part of Local Plan preparation in due course.**

**3. Introduction and Background**

- 3.1 The National Planning Policy Framework (NPPF) requires local planning authorities to produce a Local Plan for their area (Paragraph 153). Brentwood Borough Council is in the process of producing a new Local Plan and has undertaken various stages of consultation as part of the plan making process.
- 3.2 The most recent consultation was on Strategic Growth Options (January 2015). The consultation document provided an overview of the main issues to be considered as part of the Plan and set out all potential sites put forward to the Council to date for housing, employment and retail.

- 3.3 Public consultation as part of the plan making process provides opportunities for the public and stakeholders to submit their views, which are taken into consideration when preparing the Local Plan.
- 3.4 All representations made in response to the Strategic Growth Options Consultation are currently being input onto specialist planning consultation software. Representations will then be analysed and a response to each made, ensuring that comments inform the production of the next iteration of the plan; the Draft Plan.
- 3.5 In the meantime, it is possible to gain a very early indication of the level of response and key themes that the Council will need to consider.

#### **4. Issue, Options and Analysis of Options**

- 4.1 A presentation of the initial findings from responses received to the Strategic Growth Options Consultation will be made at the meeting of Ordinary Council.
- 4.2 The presentation will include information on the amount of responses received and individual comments made to particular consultation questions or issues (representations). It will also set out an initial summary of the comments received from neighbouring local planning authorities, Parish Councils, and key statutory bodies (such as Environment Agency, NHS England, Highways Agency etc).

#### **5. Reasons for Recommendation**

- 5.1 The presentation of initial findings enables information to be shared as soon as possible about some of the responses received and key themes that the Council will need to consider as part of the plan making process. However, it is important to note that while initial findings give an indication of comments received, these do not provide the final view and will require further input and analysis.

#### **6. Consultation**

- 6.1 Consultation on the Strategic Growth Options took place for six weeks from Tuesday 6 January 2015 to Tuesday 17 February 2015, in line with regulations and the Council's adopted Statement of Community Involvement.

## **7. References to Corporate Plan**

- 7.1 The Strategic Growth Options consultation forms part of the preparation of the Brentwood Local Development Plan, a key priority in the Council's Corporate Plan as part of 'A Prosperous Borough'.

## **8. Implications**

### **Financial Implications**

Chris Leslie, Deputy S151 Officer  
01277 312542 / christopher.leslie@brentwood.gov.uk

- 8.1 The cost of carrying out the Strategic Growth Options consultation, including input and analysis of comments received, has been accounted for within the existing Planning Policy budget.

### **Legal Implications**

Philip Cunliffe-Jones, Planning Lawyer  
01277 312703 / p.cunliffe-jones@brentwood.gov.uk

- 8.2 This is a necessary consultation within the statutory requirements and the Council's adopted Statement of Community Involvement (SCI).

### **Other Implications**

- 8.3 Following analysis of all comments received, a Consultation Statement will be prepared. This statement will be brought to Members for consideration in due course and will inform preparation of the Local Plan. In addition, a Consultation Statement for the Local Plan Preferred Options Consultation (July 2013) will also need to be considered by Members and inform the next stage of plan preparation.

## **9. Background Papers**

- 9.1 Strategic Growth Options Consultation (January 2015)

## **10. Appendices to this report**

N/A

### **Report Author Contact Details:**

**Name:** Phil Drane, Planning Policy Team Leader

**Telephone:** 01277 312 610

**E-mail:** phil.drane@brentwood.gov.uk

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24 March 2015

## Ordinary Council

### Letter to Secretary of State for Communities and Local Government re the Brentwood Local Development Plan

**Report of:** *Gordon Glenday, Head of Planning*

**Wards Affected:** *All*

**This report is:** *Public*

#### 1. Executive Summary

- 1.1 The public consultation on the Brentwood Local Development Plan (LDP) Strategic Growth Options has just been completed. A key element of the LDP is the assumption that around 3000 new homes will need to be provided on land currently designated as green belt. If it is proposed to de-designate parts of our green belt to meet future housing needs, Members will need assurances that this growth will be accompanied by the timely delivery of the necessary infrastructure to meet increasing demands for new physical and social infrastructure such as schools, roads, health-care and sports and leisure facilities.
- 1.2 It is therefore proposed to send a letter after the national elections to the incoming Secretary of State for Communities and Local Government seeking assurances that Brentwood's proposed housing growth can only be sustainable if the appropriate physical and social infrastructure is resourced and delivered in parallel with the housing development. The letter will be presented to Members at Full Council for consideration.

#### 2. Recommendation(s)

- 2.1 **That Members agree to send the letter to the in-coming Secretary of State for Communities and Local Government.**

#### 3. Introduction and Background

- 3.1 The Brentwood Local Development Plan (LDP) has just completed the public consultation on its Strategic Growth Options. At the next stage of the LDP, members will need to consider which sites in the Borough should be taken forward for development to meet our need for growth over the next 15 years.

- 3.2 As highlighted in the Strategic Growth Options consultation, there is an expectation that around 3000 new homes will need to be provided on land currently designated as green belt. This is clearly an issue that Members and the local community will only consider doing very reluctantly.
- 3.3 If it is proposed to de-designate parts of our green belt to meet future housing needs, local people will need the reassurance that this growth will be accompanied by the timely delivery of the necessary infrastructure to meet this growth.
- 3.4 It is therefore proposed to send a letter to the in-coming Secretary of State for Communities and Local Government seeking assurances that Brentwood's proposed housing growth can only be sustainable if the appropriate physical and social infrastructure is resourced and delivered in parallel with the housing development. This letter, if agreed by Full Council, will be sent to the Secretary of State after the national elections in May 2015 so that the issue is considered at the highest level at the earliest stage by the MP responsible for local government over the next 5 years.

#### **4. Issue, Options and Analysis of Options**

- 4.1 Members are requested to approve the proposed letter to the in-coming Secretary of State for Communities and Local Government. This letter will be presented at Full Council

#### **5. Reasons for Recommendation**

- 5.1 The letter to the Secretary of State for communities and Local Government will flag up Brentwood Borough Council's concerns that future housing growth needs to be accompanied by the funding and timely delivery of the appropriate physical and social infrastructure needed to facilitate the proposed growth

#### **6. Consultation**

- 6.1 The LDP is a key priority for the Council to develop a prosperous borough for the future.

#### **7. References to Corporate Plan**

- 7.1 The LDP is a key priority for the Council to develop a prosperous borough for the future.



## **8. Implications**

### **Financial Implications**

**Name & Title:** Chris Leslie, Deputy S151 Officer

**Tel & Email:** 01277 312542 / Christopher.leslie@brentwood.gov.uk

- 8.1 There are currently no specific financial implications. However, the provision of essential new infrastructure will require considerable investment in order to deliver sustainable growth in Brentwood over the next 15 years of the LDP. The Council and partner agencies, including central government, will therefore need to identify and allocate the essential funding required for the delivery of the essential infrastructure.

### **Legal Implications**

**Name & Title:** Philip Cunliffe-Jones, Solicitor

**Tel & Email** 01277 312860 / p-cunliffe.jones@brentwood.gov.uk

- 8.2 There are no specific legal implications arising from this report. The proposed letter to the Secretary of State will not have any statutory weight as such but will record Brentwood Borough Council's concerns that additional housing development in the area needs to be accompanied by an appropriate increase in the provision of suitable physical and social infrastructure in order to deliver sustainable growth.

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

**None to report**

- 9. Background Papers** (include their location and identify whether any are exempt or protected by copyright)

- 9.1 Strategic Growth Options Consultation (January 2015)

## **10. Appendices to this report**

- Letter to Secretary of State – Brentwood Local Development Plan (Tabled at Meeting).

### **Report Author Contact Details:**

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## BRENTWOOD BOROUGH COUNCIL

### CONSTITUTION

**15 May 2013**

The Constitution of the Brentwood Borough Council was adopted by the Council at a meeting held on 15 May 2013 and became effective from 16 May 2013. This version incorporates amendments agreed by the Council at the following meetings:

Year	Date (s) of Meetings (s)
2013	23 October
2014	7 April
2014	11 June
2014	2 July
<a href="#">2015</a>	<del>26</del> <a href="#">24</a> March

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15/05/2013

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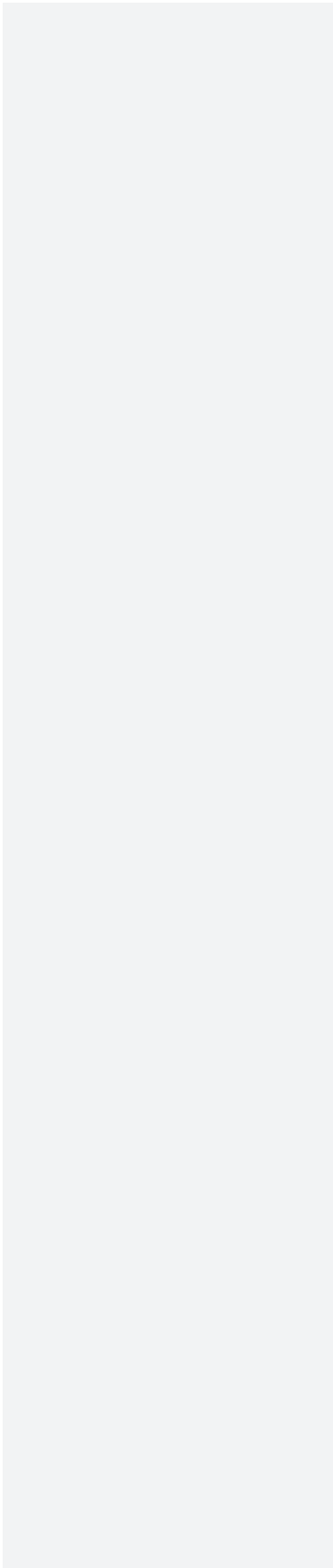
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15/05/2013

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## CHAPTER 1 - SUMMARY AND EXPLANATION OF THE COUNCIL'S CONSTITUTION

The Council is the ultimate decision making body of Brentwood Borough Council and the principal forum for major political debate. All 37 Councillors who have been elected to represent the borough attend the Council meeting.

The Council decides the overall objectives, major policies and financial strategies of the Council. It also considers recommendations from the Scrutiny and Regulatory Committees on issues of significance.

Through the Constitution, it delegates responsibility for carrying out many of the Borough Council's functions and policies to its committees. It also agrees the membership of the committees/sub-committees.

The Council has, in accordance with Section [379P](#) of the Local Government Act 2000, agreed this constitution which sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by the law, while others are a matter for the Council to choose.

The Constitution is divided into 13 Articles which set out the basic rules governing the Council's business. Detailed procedures and codes of practice are provided in Chapters 3-7 of this document.

### **What's in the Constitution?**

Article 1 of the Constitution commits the Council to exercise all its powers and duties in accordance with the law and this Constitution. Articles 2-13 explain the rights of residents and how the key parts of the Council operate.

### **How the Council Operates**

The Council is composed of 37 members who hold office for four years. Details of the political composition of the Council are available on the Council's website.

Meetings of the Council decide the Council's overall policies and set the budget each year. Council meetings are normally open to the public.

### **How Decisions are Made**

Most decisions are made by committees. The Audit and Scrutiny Committee is responsible for all overview and scrutiny functions on behalf of the Council.

The Planning and Development Control Committee, Licensing Committee and Audit and Scrutiny Committee perform ~~quasi-judicial or~~ regulatory functions.

All meetings of the Council's committees are open to the public except where the committee, in accordance with the Local Government Act 1972, decides to exclude the public because items include exempt or confidential information.

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### **Overview and Scrutiny**

There is an Audit and Scrutiny Committee that supports the work of the policy committees and the Council as a whole. They allow residents to have a greater say in Council matters by holding public inquiries into matters of local concern. These can lead to reports and recommendations which advise the policy committees and the Council as a whole on its policies, budget and service delivery. The Audit and Scrutiny Committee can also monitor the decisions of the policy committees. They can 'call-in' a decision made by a policy committee but not yet implemented. This enables them to consider whether the decision is appropriate. They may recommend that the policy committee or council reconsider the decision. They may also be consulted by policy committees on forthcoming decisions and the development of policy.

### **The Council's Staff**

The Council has people working for it to give advice, implement decisions and manage the day-to-day delivery of its services. Staff may [in certain circumstances](#) be given delegated powers by the Council to make decisions on its behalf. Some staff have a specific duty to ensure that the Council acts within the law and uses its resources wisely. A protocol on member/staff relations governs the relationships between staff and members of the council. (Chapter 5 of this Constitution)

### **Residents' Rights**

The Council welcomes participation by its residents in its work and the rights of residents in their dealings with the Council are set out in detail in Article 3. Some of these are legal rights, whilst others depend on the Council's own processes.



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## CHAPTER 2 - ARTICLES OF THE CONSTITUTION

### ARTICLE 1 - THE CONSTITUTION

#### 1.1 **Powers of the Council**

The Council will exercise all its powers and duties in accordance with the law and this Constitution.

#### 1.2 **The Constitution**

This Constitution, and all its appendices, is the Constitution of Brentwood Borough Council.

#### 1.3 **Purpose of the Constitution**

The purpose of the Constitution is to:

- (a) enable the Council to provide clear leadership to the community in partnership with residents, businesses and outside organisations;
- (b) support the active involvement of residents in the process of council decision-making;
- (c) help members represent their constituents more effectively;
- (d) enable decisions to be taken efficiently and effectively in accordance with the principles set out in Article 10.2;
- (e) create a powerful and effective means of holding decision-makers to public account;
- (f) ensure that no one will review or scrutinise a decision in which they were directly involved;
- (g) ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and
- (h) provide a means of improving the delivery of services to the community.

#### 1.4 **Interpretation and Review of the Constitution**

Where the Constitution permits the Council to choose between different courses of action at its meeting, the Council should choose that option which it thinks is closest to the purposes stated in Article 1.3.

The Council will monitor and evaluate the operation of the Constitution as set out in Article 12.

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## ARTICLE 2 - MEMBERS OF THE COUNCIL

### 2.1 **Composition and eligibility**

- (a) **Composition.** The Council will comprise 37 members. One or more members will be elected by the voters of each ward in accordance with a scheme drawn up by the Local Government Commission and approved by the Secretary of State.
- (b) **Eligibility.** Only registered voters of the borough; or those owning or occupying land or premises; or living or working in the borough will be eligible to hold the office of member.

### 2.2 **Election and terms of members**

- (a) The ordinary election of a third (or as near as may be) of all members will be held on the first Thursday in May in each year except that in every fourth year there will be no regular election.
- (b) The terms of office of members will be four years starting on the fourth day after being elected and finishing on the fourth day after the date of the regular election four years later.

### 2.3 **Roles and functions of all members**

#### 2.3.1 **Key roles.** All members will:

- (a) collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
- (b) contribute to the good governance of the area and actively encourage community participation and the involvement of residents in decision making;
- (c) actively represent the interests of their ward and of residents and outside organisations;
- (d) respond to residents' enquiries and representations, fairly and impartially;
- (e) participate in the governance and management of the Council; and
- (f) maintain the highest standards of conduct and ethics.

#### 2.3.2 **Rights and duties**

- (a) Members will have rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law.
- (b) Members will not make public information which is confidential or exempt without the consent of the Council or divulge information given in confidence to anyone other than a member or member of staff entitled to know it. For these purposes, "confidential" and "exempt" information are as defined in the Access to Information Rules in Chapter 4 of this Constitution.

(c) Members have a duty to declare pecuniary and non-pecuniary interests as well as any gifts and hospitality they have received.

2.4 **Conduct**

Members will at all times observe the Members' Code of Conduct and the Protocol on Member/Staff Relations set out in Chapter 5 of this Constitution.

2.5 **Allowances**

Members will be entitled to receive allowances in accordance with the Members' Allowances Scheme set out in Chapter 6 of this Constitution.

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## ARTICLE 3 - RESIDENTS AND THE COUNCIL

### 3.1 Residents' rights

Residents have the following rights. Their rights to information and to participate are explained in more detail in the Council Procedure Rules and the Access to Information Rules in Chapter 4 of this Constitution:

#### 3.1.1 **Voting and Petitions**

Residents on the electoral roll for the area have the right to vote at local elections and also to sign a petition to request a referendum for an elected mayor form of Constitution.

#### 3.1.2 **Information**

Residents have the right to:

- (a) attend meetings of the Council, its committees and sub-committees except where confidential or exempt information is likely to be disclosed, and the public is therefore excluded;
- (b) report on meetings, which is defined in The Openness of Local Government Bodies Regulations 2014 as:
  - (i) filming, photographing or audio recording of proceedings;
  - (ii) using any other means for enabling people not present at the meeting to see or hear proceedings as it takes place or at a later date;
  - (iii) reporting or providing commentary on proceedings orally or in writing so that the report or commentary is available as the meeting takes place or later to persons not present;
- (c) inspect agendas and reports of Council, its committees and sub-committees;
- (d) see and request copies of background papers, and any records of decisions made by the Council its committees and sub-committees; and
- (e) inspect certain officer decisions together with background papers. (See Access to Information Rules under Chapter 4 of this Constitution.
- (f) inspect the Council's accounts and make their views known to the external auditor.

#### 3.1.3 **Participation**

Residents have the right to participate in the Council's question time in accordance with Rule 11 in the Council Procedure Rules, at meetings of the Planning and Development Committee and to contribute to investigations by the Audit and Scrutiny Committee.

#### 3.1.4 **Complaints**

Residents have the right to complain:

- (a) to the Council under its complaints scheme;
- (b) to the Local Government Ombudsman after using the Council's own complaints scheme;
- (c) about the conduct of a member if they have evidence which they believe shows that a member has breached the Council's Code of Conduct.

3.2 **Residents' responsibilities**

Residents must not be violent, abusive or threatening to members or staff and must not wilfully harm things owned by the council, members or staff.

3.3 **Contacting their local member**

- (a) Residents have the right to contact their local member about any matters of concern to them.
- (b) Residents have the right to lobby any member about any matters of concern to them.

3.4 **Contacting the Council**

Residents can contact the Council through its website, by email, in person or on the telephone.

## ARTICLE 4 - THE COUNCIL

### 4.1 Policy Framework and Budget

#### 4.1.1 Policy Framework

The policy framework includes the following plans and strategies:-

- (a) Corporate plan;
- (b) The local development framework;
- (c) Treasury management strategy;
- (d) Sustainable community strategy;
- (e) Crime and disorder reduction strategy;
- ~~(e)(f)~~ Licensing authority policy statement-

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#### 4.1.2 Budget

The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, the council tax base, setting the council tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits.

### 4.2 Functions of the Council

Only the Council will exercise the following functions:-

- (a) adopting and changing the Constitution;
- (b) approving or adopting the Council policies and strategies which form the policy framework;
- (c) agreeing and approving the budget (including the approval or adoption of a plan or strategy for the control of the local authority's borrowing, investments or capital expenditure, or for determining the Council's minimum revenue provision);
- (d) approval for the purpose of submission to Government for approval of any plan or strategy, referred to in sub-paragraph (b) or (c) above
- ~~(e)~~(e) changes to the policy framework by amending, modifying, varying or revoking any plan or strategy referred to sub-paragraph (b) or (c) above
- ~~(d)~~(f) agreeing and/or amending the terms of reference for committees and any joint committees, deciding on their composition chairmanship and making initial appointments to them;

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~~(e)~~(g) appointing representatives to outside bodies unless the appointment has been delegated by the Council;

(h) adopting, amending, revoking or replacing a members' allowances scheme under Chapter 6;

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~~(f)~~(i) determination of (a) the amount Mayor's expenses; (ii) Deputy Mayor's expenses and the determination of (b) the amount of any allowance payable pursuant to a scheme under section 18 of the Local Government and Housing Act 1989, or the rates at which payments, by way of any such allowance are to be made;

(j) changing the name of the area, conferring the title of honorary alderman or honorary alderwoman or the title of honorary freeman or honorary freewoman freedom of the Borough;

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(k) making a request to the Local Government Boundary Commission for England for single-member electoral areas;

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(l) passing a resolution to change a scheme for elections;

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(m) passing a resolution to make a change in local authority governance arrangements;

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(n) making an order giving effect to recommendations made in a community governance review;

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~~(g)~~(o) determinations relating to the voting rights of co-opted members of an overview and scrutiny committee;

~~(h)~~(p) confirming the appointment or dismissal of the Head of Paid Service; Monitoring Officer; and Section 151 Officer;

(q) making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills;

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(r) approving a Pay Statement under the Localism Act 2011;

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(s) determination of whether or not to accept a delegation of another local authority's functions under section 101(1)(b) of the Local Government Act 1972;

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(t) elect the Mayor and to appoint the Deputy Mayor;

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(u) adoption of and revision of the Code of Conduct for Members;

(i)

(v) all other matters which by law must be reserved to Council;

(w) to elect from its Members a Leader and Deputy Leader of the Council;

~~(t) adoption of the Code of Conduct for Members;~~

(x) approving the making of a virement or payment from the Council's reserves for values exceeding £200,000; and

(y) determination of other matters appropriately referred to Council.

#### 4.3 **Council meetings**

There are three types of Council meeting:-

- (a) the annual meeting;
- (b) ordinary meetings;
- (c) extraordinary meetings;

and they will be conducted in accordance with the Council Procedure Rules in Chapter 4 of this Constitution.

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## ARTICLE 5 - ELECTION, ROLE AND FUNCTION OF THE MAYOR

The Mayor will be elected and the Deputy Mayor will be appointed by the Council annually at the Annual Meeting from among the Members of the Council. ~~to serve for a period of one municipal year in accordance with the procedure set out at Appendix B.~~ The Mayor, or in their absence, the Deputy Mayor, will have the following roles, functions and responsibilities:

### 5.1 **Ceremonial role**

To be the "first citizen" of the Borough, a member of the Council and its ceremonial head.

### 5.2 **Chairing the Council Meeting**

- (a) to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of members and the interests of the community;
- (b) to ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which members are able to hold committee chairs to account.

### 5.3 **Other Responsibilities**

The Mayor will have the following responsibilities:

- (a) to uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
- (b) to promote public involvement in the Council's activities;
- (c) to be the conscience of the Council; and
- (d) to attend such civic and ceremonial functions as the Council or the Mayor determines to be appropriate.

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## ARTICLE 6 - AUDIT AND SCRUTINY COMMITTEE

### 6.1 Terms of reference

The Council ~~will~~ has resolved to appoint an Audit and Scrutiny Committee to discharge the functions conferred by ~~section 24~~ section 9JA of the Local Government Act 2000 and under the Local Authorities (Committee System) (England) Regulations 2012 SI2012/1020 and set out in detail in Chapter 3 of this Constitution.

### 6.2 General role

Within their terms of reference, the Audit and Scrutiny Committee will:

- (a) review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- (b) make reports and/or recommendations to the Council or any appropriate Committee in connection with the discharge of any functions; and
- (c) consider any matter affecting the area or its residents.

### 6.3 Specific functions

#### 6.3.1 **Policy development and review**

The Audit and Scrutiny Committee may:

- (a) assist the Council in the development of its budget and policy framework by in-depth analysis of policy issues;
- (b) conduct research, community and other consultation in the analysis of policy issues and possible options;
- (c) consider and implement mechanisms to encourage and enhance community participation in the development of policy options;
- (d) question members of committees and staff about their views on issues and proposals affecting the area; and
- (e) liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.

#### 6.3.2 **Scrutiny**

The Audit and Scrutiny Committee may:

- (a) review and scrutinise the decisions made by and performance of committees and council staff both in relation to individual decisions and over time;
- (b) review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;

- (c) question members of committees and staff about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;
- (d) make recommendations to the appropriate committee and/or Council arising from the outcome of the scrutiny process;
- (e) review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the Audit and Scrutiny Committee and local people about their activities and performance; and
- (f) question and gather evidence from any person with their consent.

#### 6.3.3 **Annual report**

The Audit and Scrutiny Committee will report annually to Council on their work programme and make recommendations for future work programmes.

#### 6.4 **Proceedings of the Audit and Scrutiny Committee**

The Audit and Scrutiny Committee will conduct its proceedings in accordance with the Overview and Scrutiny Procedure Rules set out in Chapter 4 of this Constitution.

**ARTICLE 7 - COMMITTEES**

7.1 **Committees**

The Council will appoint the committees set out in Chapter 3 of this Constitution, to discharge the functions described in Chapter 3.

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**ARTICLE 8 - JOINT ARRANGEMENTS****8.1 Joint arrangements**

- (a) The Council may establish joint arrangements with one or more local authorities to exercise functions in any of the participating authorities, or advise the Council. Such arrangements may involve the appointment of a joint committee with these other local authorities.
- (b) A joint committee is a committee set up with one or more local authorities, or with a combination of one or more local authorities and another body or bodies for purposes in respect of which they are jointly interested.
- (c) Details of any joint arrangements including any delegations to joint committees can be found in the Council's scheme of delegations in Chapter 3 of this Constitution.

**8.2 Access to information**

The Access to Information Rules in Chapter 4 of this Constitution apply.

**8.3 Delegation to and from other local authorities**

- (a) The Council may delegate functions to another local authority or, in certain circumstances, the executive of another local authority.
- (b) The decision whether or not to accept such a delegation from another local authority shall be reserved to the Council meeting.

## ARTICLE 9 - STAFF

### 9.1 Management Structure

#### (a) General

The Council may engage such staff as it considers necessary to carry out its functions.

#### (b) Chief Officers

The Council will engage persons for the following posts, who will be designated chief officers in accordance with the relevant legislation:

Head of Paid Service	Overall corporate management and operational responsibility (including overall management responsibility for all staff).  Provision of professional advice to all parties in the decision making process.  Together with the Monitoring Officer, responsibility for a system of record keeping for all of the Council's decisions.  Representing the Council on partnership and external bodies (as required by statute or the Council).
Chief Finance Officer	Ensuring lawfulness and financial prudence of decision making.  Administration of financial affairs.  Contributing to corporate management.  Providing advice to the Council.

#### (c) **Head of Paid Service, Monitoring Officer and Chief ~~Financial~~ Finance Officer**

The Council will designate staff to fulfil the following functions:

Head of Paid Service  
Monitoring Officer  
Chief Finance Officer (S151 Officer)

Such posts will have the functions described below.

#### (d) Structure

The Head of Paid Service will determine and publicise a description of the overall departmental structure of the Council showing the management structure on the Council's website.

### 9.2 Functions of the Head of Paid Service

#### (a) Discharge of functions by the Council

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The Head of Paid Service will report to Council on the manner in which the discharge of the Council's functions is co-ordinated, the number and grade of staff required for the discharge of functions and the organisation of staff.

**(b) Restrictions on functions**

The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance Officer if a qualified accountant.

**9.3 Functions of the Monitoring Officer**

**(a) Maintaining the Constitution**

The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by members, staff and the public.

**(b) Ensuring lawfulness and fairness of decision making**

After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the Council if he/she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.

**(c) Proper officer for access to information**

The Monitoring Officer will ensure that decisions, together with the reasons for those decisions and relevant reports and background papers are made publicly available as soon as possible.

**(d) Providing advice**

The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety and probity to all members.

**(e) Restrictions on posts**

The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

(f) The statutory duty of the Monitoring Officer shall be performed personally or, where he/she is unable to act owing to absence or illness, personally by such member of their staff as he/she has for the time being nominated as his/her deputy for the purposes of s5 Local Government and Housing Act 1989.

**9.4 Functions of the Chief Finance Officer (section 151 officer)**

**(a) Ensuring lawfulness and financial prudence of decision making**

After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the Council and the Council's external auditor if he/she considers that any proposal, decision or course of action will involve incurring unlawful

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expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.

(b) **Administration of financial affairs**

The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.

(c) **Contributing to corporate management**

The Chief Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.

(d) **Providing advice**

The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety and probity to all members and will support and advise members and staff in their respective roles.

9.5 **Duty to provide sufficient resources to the Monitoring Officer and Chief Finance Officer**

The Council will provide the Monitoring Officer and Chief Finance Officer with such staff, accommodation and other resources as are, in their opinion, sufficient to allow their duties to be performed.

9.6 **Conduct**

Staff will comply with the Staff Code of Conduct and the Protocol on Member/ Staff Relations set out in Chapter 5 of this Constitution.

9.7 **Employment**

The recruitment, selection and dismissal of staff will comply with the Staff Employment Procedure Rules set out in Chapter 4 of this Constitution.



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**ARTICLE 10 - DECISION MAKING****10.1 Responsibility for decision making**

The Council will issue and keep up to date a record of what part of the Council or individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Chapter 3 of this Constitution.

**10.2 Principles of decision making**

All decisions of the Council will be made in accordance with the following principles:

All decisions taken in the discharge of a function of the Council shall have regard to the following matters:

- (a) The presumption in favour of openness and transparency.
- (b) The need for consultation with interested parties.
- (c) The need to take account of relevant professional advice from appropriate staff.
- (d) The need for clarity of aims and desired outcomes.
- (e) The need to identify the range of options considered.
- (f) The need to give reasons and explanation for a decision.

**10.3 Decision making by the Council, committees and sub-committees**

The relevant Council Procedure Rules set out in Chapter 4 of this Constitution will be followed at meetings of the Council, committees and sub-committees when considering any matter.

**10.4 Decision making by Audit and Scrutiny Committees**

The Audit and Scrutiny Committee will follow the Overview and Scrutiny Procedure Rules set out in Chapter 4 of this Constitution when considering any matter.

**10.5 Decision making by Council bodies or staff acting as a tribunal or in a quasi judicial manner**

- (a) Whenever the Council, or a member or a member of staff considers or determines the civil rights or obligations or the criminal responsibility of any person they will follow a proper procedure.
- (b) This procedure will accord with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.

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**ARTICLE 11 - FINANCE, CONTRACTS AND LEGAL MATTERS****11.1 Financial management**

The management of the Council's financial affairs will be conducted in accordance with the Financial Regulations set out in Chapter 4 of this Constitution.

**11.2 Contracts**

Every contract made by the Council will comply with the Standing Orders relating to Contracts set out in Chapter 4 of this Constitution.

**11.3 Legal proceedings**

The Monitoring Officer is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Monitoring Officer considers that such action is necessary to protect the Council's interests.

**11.4 Authentication of documents**

Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the Monitoring Officer or other person authorised by him, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

**11.5 Common Seal of the Council**

- (a) The Common Seal of the Council will be kept in a safe place in the custody of the Monitoring Officer.
- (b) A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision.
- (c) The Common Seal will be affixed to those documents which in the opinion of the Monitoring Officer should be sealed.
- (d) The sealing of a document will be witnessed by the Mayor or Deputy Mayor.

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**ARTICLE 12 - REVIEW AND REVISION OF THE CONSTITUTION****12.1 Duty to monitor and review the Constitution**

- (a) The Council will have responsibility for monitoring and reviewing the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.
- (b) Subject to the exceptions set out below, changes to the Constitution will only be effective if approved by the full Council.
- (c) Amendments to the Constitution will normally only be considered by the Council following a report and recommendation from the Audit and Scrutiny Committee, or Constitution Working Group and having received the advice of the Monitoring Officer.

**12.2 Changes to the Constitution**

- (a) Subject to paragraph (c) below, changes to the Constitution may only be approved by the full Council after consideration of the proposal by an appropriate Member body (see paragraph 12.1 (c) above).
- (b) The Council has agreed that there should be a Constitution Working Group appointed by and reporting to the Council to undertake a fundamental review the Constitution and recommend changes to the Council.
- (c) The Member body recommending changes to the Constitution whether it is the Constitution Working Group, or the Audit and Scrutiny Committee will have regard to advice from the Monitoring Officer on any proposals relating to the Constitution. The Monitoring Officer may submit a report direct to the Council in any case where his/her advice is not accepted by the Member body.
- (d) The Monitoring Officer may make changes to the Constitution to give effect to any decisions of the Council and changes in the law and to make minor amendments such as to correct errors and to ensure that the Constitution is maintained up-to-date. Any such changes will be communicated to all Members of the Council.

## ARTICLE 13 - SUSPENSION, INTERPRETATION AND PUBLICATION OF THE CONSTITUTION

### 13.1 Suspension of the Constitution

#### 13.1.1 Limit to suspension

The Articles of this Constitution may not be suspended.

13.1.2 The Council Procedure Rules in Chapter 4 may be suspended by the Council to the extent permitted within those Rules and the law if ~~three-quarters of the whole number of a majority of~~ members of the Council ~~are~~ present ~~and~~ vote for the suspension ~~by a majority~~.

#### 13.1.3 Procedure to suspend

A motion to suspend any Rules will not be moved without notice ~~and with at least three-quarters of the whole number of members being present~~.

#### 13.1.4 Rules capable of suspension

All of the Council Procedure Rules may be suspended except where they are required by law. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Article 1.

### 13.2 Interpretation

The ruling of the Mayor as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purpose of this Constitution contained in Article 1.

### 13.3 Publication

(a) The Monitoring Officer will ensure that a copy of this Constitution is available to each member of the Council upon delivery to him/her of that member's declaration of acceptance of office on the member first being elected to the Council.

(b) The Monitoring Officer will ensure that copies of this Constitution are available for inspection at council offices, libraries and other appropriate locations.

~~(b)~~(c) A printed copy of the Constitution may be purchased upon request for a reasonable fee.

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**SCHEDULE 1: DESCRIPTION OF ARRANGEMENTS**

The following parts of this Constitution constitute the alternative arrangements:-

1. Article 6 (Audit and Scrutiny Committee) and the Overview and Scrutiny Procedure Rules;
2. Article 7 (Committees).

## CHAPTER 3 - POWERS AND DELEGATIONS

### PART 3.1 - POWERS AND DUTIES OF THE COUNCIL AND ITS COMMITTEES

#### 1. Matters Reserved to meetings of Council

##### 1.1 Council

The Council is the ultimate decision making body of Brentwood Borough Council and the principal forum for major political debate. All 37 Councillors who have been elected to represent the ~~borough~~ Borough attend the Council meeting.

The Council decides the overall objectives, major policies and financial strategies of the Council. It also considers recommendations from the Scrutiny and Regulatory Committees on issues of significance.

Through the Constitution, it delegates responsibility for carrying out many of the Borough Council's functions and policies to its committees. It also agrees the membership of the committees/sub-committees.

##### 1.2 Functions of the Council

Only the Council will exercise the following functions:-

(a) adopting and approving changes to the Constitution;

~~adopting and amending Contract Standing Orders and Financial Regulations;~~

(b) approving or adopting the Council policies and strategies which form the policy framework;

(c) agreeing and approving the budget (including the approval or adoption of a plan or strategy for the control of the local authority's borrowing, investments or capital expenditure, or for determining the Council's minimum revenue provision);

(d) approval for the purpose of submission to Government for approval of any plan or strategy, referred to in sub-paragraphs (b) and (c) above;

~~(b)~~(e) changes to the policy framework by amending, varying or revoking any plan or strategy referred to in sub-paragraphs (b) and (c) above;

~~(e)~~(f) agreeing and/or amending the terms of reference for committees and any joint committees, deciding on their composition chairmanship and making initial appointments to them;

~~(e)~~(g) appointing representatives to outside bodies and consultative groups unless the appointment has been delegated by the Council;

(h) adopting, ~~and~~ amending, revoking or replacing a members' allowances scheme under Chapter 6;

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(i) determination of (a) the amount of the Mayor's expenses; (ii) Deputy Mayor's expenses and the determination of (b) the amount of any allowance payable pursuant to a scheme under section 18 of the Local Government and Housing Act 1989, or the rates at which payments, by way of any such allowance are to be made;

~~(e)~~

~~(f) to elect the Leader and Deputy Leader of the Council;~~

~~(g) to designate the Chairs and Vice Chairs of the Council;~~

~~(h) adoption of the Code of Conduct for Members;~~

~~(i) electoral and ceremonial matters relevant to the Council~~

(j) changing the name of the area, conferring the title of honorary alderman or honorary alderwoman or the title of honorary freeman or honorary freewoman~~freedom of the borough;~~

~~(j)(k)~~ making a request to the Local Government Boundary Commission for England for single-member electoral areas;

~~(l) setting the Council's Budget and Council Tax~~passing a resolution to change a scheme for elections

(m) passing a resolution to make a change in local authority governance

(n) making an order giving effect to recommendations made in a community governance review

~~(k)(o)~~ determinations relating to the voting rights of co-opted members of an overview and scrutiny committee;

~~(l) approving the making of a virement or payment from the Council's reserves for values exceeding £200,000;~~

~~(m) approving of the Council's Corporate Plan;~~

~~(n) approving or adopting the Council policies and strategies which form the policy framework;~~

~~(o) making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills;~~

(p) confirming the appointment or dismissal of the Head of Paid Service; Monitoring Officer; and Section 151 Officer;

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~~(q) to consider reports on cross cutting matters not expressly delegated to another committee;~~

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~~(q) making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills;~~

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~~(r) approving a Pay Statement under the Localism Act 2011;~~

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~~(s) determination of whether or not to accept a delegation of another local authority's functions under section 101(1)(b) of the Local Government Act 1972;~~

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~~(t) elect the Mayor and to appoint the Deputy Mayor;~~

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~~(u) adoption of and revision of the Code of Conduct for Members~~

~~(v) all other matters which by law must be reserved to Council;~~

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~~(w) elect from its Members a Leader and Deputy Leader of the Council;~~

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~~(x) approving the making of a virement or payment from the Council's reserves for values exceeding £200,000; and~~

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~~(y) determination of other matters appropriately referred to Council.~~

## 2. General Powers of Committees

This scheme of delegation sets out the functions of the Council to be discharged by its committees and sub-committees and includes the terms of reference of statutory and non statutory bodies set up by the Council.

Each committee or sub-committee will have the following general powers and duties:

- (a) To carry out the duties and powers of the Council within current legislation;
- (b) To comply with the Council's standing orders and financial regulations;
- (c) To operate within the budget allocated to the committee by the Council.
- (d) To guide the Council in setting its policy objectives and priorities including new initiatives, and where appropriate make recommendations to Council
- (e) To develop, approve and monitor the relevant policies and strategies relating to the Terms of Reference of the committee;



- (f) To secure satisfactory standards of service provision and improvement, including monitoring of contracts, Service Level Agreements and partnership arrangements;
- (g) To consider and approve relevant service plans;
- (h) To determine fees and charges relevant to the committee;

## 2.1 Finance and Resources Committee

### 1. Appointment and Membership

The Finance and Resources Committee is appointed under section 102 of the Local Government Act 1972 and under all other powers.

The Finance and Resources Committee shall consist of nine elected councillors and be politically balanced.

### 2. Specific Terms of Reference

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1. The functions within the remit of the Finance and Resources Committee are set out below.
  - 1) Financial Services
  - 2) Contracts, commissioning, procurement
  - 3) Legal services
  - 4) Health and safety at work (in so far as it relates to the Council as an employer)
  - 5) Corporate communications and media protocols
  - 6) Corporate and Democratic services
  - 7) Member Development
  - 8) Data quality
  - 9) Human resources
  - 10) Information Communication Technology
  - 11) Revenues and Benefits
  - 12) Customer Services
2. Overall responsibility for monitoring Council performance.
3. To formulate and develop relevant corporate policy documents and strategies including the Corporate Plan.

4. To formulate the budget proposals in accordance with the Budget and Policy Framework, including capital and revenue spending, and the Housing Revenue Account Business Plan (including rent setting for Council homes), in accordance with the Council's priorities and make recommendations to Council for approval.
5. To formulate the Council's Borrowing and Investment Strategy and make recommendations to Council for approval.
6. To take decisions on spending within the annual budget to ensure delivery of the Council's priorities.
7. To approve the making of a virement or payment from the Council's reserves with a maximum value of £200,000.
8. To approve the write-off of any outstanding debt owed to the council above the delegated limit of £5,000.
9. To determine capital grant applications.
10. To make recommendations on the allocation and use of resources to achieve the Council's priorities.
11. To manage and monitor the Council approved budgets;
12. To provide the lead on partnership working including the joint delivery of services.
13. To consider any staffing matters that are not delegated to Officers, such as proposals that are not contained within existing budgetary provision.

## 2.2 Business and Town Centres Committee

### 1. Appointment and Membership

The Business and Town Centres Committee is appointed under section 102 of the Local Government Act 1972 and under all other powers.

The Business and Town Centres Committee shall consist of ten elected councilors and be politically balanced.

### 2. Specific Terms of Reference

The functions within the remit of the Business and Town Centre Committee are set out below:

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~~4.~~ 1. To lead, consider and propose matters concerning the promotion of economic development throughout the Borough and the interface with countywide ~~or~~ and regional economic development initiatives.

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~~2.~~ 2. To promote and encourage enterprise and investment in the Borough in order to maintain and sustain the economic wellbeing and regeneration of the area.

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3. To develop a climate where businesses and individuals can innovate, compete and contribute to the economic development and regeneration of the area; and excellence in local business.
4. To encourage the growth of existing businesses in the Borough and access to the skills and training necessary to support them.
5. To consider and determine matters relating to the promotion, maintenance and enhancement of the vitality and viability of shopping centres within the Borough.
6. To consult with the Chamber of Commerce ~~and~~ Federation of Small Businesses, residents and interested parties when required.
7. To maintain a special interest in promoting employment in the borough.
8. To promote and encourage tourism and heritage
9. Parking (off Street parking provision in Council owned car parks)
10. Community Safety and CCTV

## 2.3 Environment Committee

### 1. Appointment and Membership

The Environment Committee is appointed under section 102 of the Local Government Act 1972 and under all other powers.

The Environment Committee shall consist of ten elected councillors and be politically balanced.

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### 2. Specific Terms of Reference

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1. The functions within the remit of the Environment Committee are set out below:
  - 1) Waste management, refuse collection and recycling
  - 2) Environmental improvement schemes
  - 3) The quality of the public realm, including street services and grounds maintenance
  - 4) Highway matters that are the responsibility of the Borough Council and drainage
  - 5) Public conveniences
  - 6) Cemeteries and closed churchyards

- 7) Unlawful incursions

## 2.4 Community Committee

### 1.Appointment and Membership

The Community Committee is appointed under section 102 of the Local Government Act 1972 and under all other powers.

The Community Committee shall consist of ten elected councillors and be politically balanced.

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### 2.Specific Terms of Reference

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1. The functions within the remit of the Community Committee are set out below
  - 1) Community and Localism Initiatives
  - 2) The Voluntary Sector and community partnerships
  - 3) Parish Council liaison
  - 4) Health and Wellbeing
  - 5) Grants to organisations/voluntary organisations.
  - 6) Parks, open spaces, countryside, allotments
2. To take the lead on community leadership and consultation with stakeholders.

## 2.5 Housing and Health Committee

### 1.Appointment and Membership

The Housing and Health Committee is appointed under section 102 of the Local Government Act 1972 and under all other powers.

The Health and Housing Committee shall consist of ten elected councillors and be politically balanced.

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1. The functions within the remit of the Housing and Health Committee are set out below
  - 1) Affordable housing
  - 2) Housing strategy and investment programme
  - 3) The Housing Revenue Account Business Plan
  - 4) Housing standards, homelessness, homelessness prevention and advice
  - 5) Housing needs assessment

- 
- 6) Housing benefit - welfare aspects
  - 7) Private sector housing and administration of housing grants
  - 8) Tenancy Management and landlord functions
  - 9) Environmental Health
  - 10) Environmental nuisance and pollution controls
  - 11) Other miscellaneous powers enforced by Environmental Health
  - 12) Food safety and health and safety
2. To make recommendations to Finance and Resources on the setting of rents for Council homes.

## 2.6 **Asset and Enterprise Committee**

### 1.Appointment and Membership

The Assets and Enterprise Committee is appointed under section 102 of the Local Government Act 1972 and under all other powers.

The Assets and Enterprise Committee shall consist of ten councilors and shall be politically balanced.

### 2.Specific Terms of Reference

The functions within the remit of the Asset and Enterprise Committee are:

- 1) To manage any lands or property of the Council and provide strategic property advice relating to the Council's Housing Stock

#### The Council's Asset Management Plan

- 1) The acquisition and disposal of land and property and taking of leases, licenses, dedications and easements.
- 2) The granting variation renewal review management and termination of leases licenses dedications and easements
- 3) Promoting the use of Council owned assets by the local community and other interested parties.
- 4) To manage any lands or property of the Council;
- 5) To include properties within the Council's Asset Management Portfolio including Halls etc.

- 6) To take a strategic approach to asset management, ensuring that the use of all of the Council's Property assets achieves Value for Money and supports the achievement of the Council's corporate priorities.
- 7) To review the Corporate Asset Management Plan annually.
- 8) The acquisition of land in advance of requirements for the benefit, improvement or development of the Borough.
- 9) Disposal of land (including by lease) surplus to the requirements of any Panel or Committee.
- 10) Appropriation of land surplus to the requirements of a committee.
- 11) Promote the use of Council owned assets by the local community and other interested parties where appropriate
- 12) Property and asset management, including acquisitions and disposals not included in the approved Asset Management Plan.

#### Enterprise

- 1) To take a strategic approach to commercial activity, both existing and new, ensuring the council realises revenue generation opportunities and supports the achievement of the Council's corporate priorities.
- 2) Promoting a culture of entrepreneurialism and building the required skills and capacity.
- 3) To consider, and approve, business cases and commercial business plans for commercial activity.

## **2.7 Audit and Scrutiny Committee**

### 1.Appointment and Membership

The Audit and Scrutiny Committee is appointed under section 102 of the Local Government Act 1972, section 9JA of the Local Government Act 2000, section 19(1) and 19 (9B) of the Police and Justice Act 2006 and under all other powers.

The Audit and Scrutiny Committee shall consist of eight elected councillors and be politically balanced.

### 2.Specific Terms of Reference

The Audit and Scrutiny Committee provides advice to the Council and the committees on the effectiveness of the arrangements for the proper administration of the Council's financial affairs, including all relevant strategies and plans.

#### Audit Activity

- (a) To approve the Annual Internal Audit risk based plan of work.

- 
- (b) To consider the Head of Internal Audit's annual report and opinion, and a summary of Internal Audit activity and the level of assurance it can give over the Council's corporate governance, risk management and internal control arrangements.
  - (c) To consider regular progress reports from Internal Audit on agreed recommendations not implemented within a reasonable timescale.
  - (d) To consider the External Auditor's annual letter, relevant reports, and the report to those charged with governance.
  - (e) To comment on the scope and depth of external audit work and to ensure it gives value for money.
  - (f) To consider the arrangements for the appointment of the Council's Internal and External Auditors.

#### Regulatory Framework

- 1) To maintain an overview of the Council's Constitution in respect of contract procedure rules, financial regulations and codes of conduct and behaviour.
- 2) To review any issue referred to it by a Statutory Officer of the Council or any Council body.
- 3) To monitor the effective development and operation of risk management and corporate governance in the Council.
- 4) To monitor Council policies and strategies on
  - Whistleblowing
  - Money Laundering
  - Anti-Fraud and Corruption
  - Insurance and Risk Management
  - Emergency Planning
  - Business Continuity
- 5) To monitor the corporate complaints process.
- 6) To consider the Council's arrangements for corporate governance and agreeing necessary actions to ensure compliance with best practice.
- 7) To consider the Council's compliance with its own and other published standards and controls.

#### Accounts

- 1) To review the annual statement of accounts. Specifically, to consider whether appropriate accounting policies have been followed and whether there are concerns arising from the financial statements or from the audit that need to be brought to the attention of the Council.
- 2) To review the Council's Annual Governance Statement.

- 3) To consider the External Auditor's report to those charged with governance on issues arising from the audit of the accounts.

#### Scrutiny

- 1) To prepare the annual overview and scrutiny work programme taking into account items put forward by members and the Corporate Leadership Board ensuring that such items relate to the Council's functions and corporate priorities.
- 2) To propose 'place based' or local scrutiny for issues where a local investigative approach with a range of people or organisations is an appropriate way forward.
- 3) To manage scrutiny resources efficiently and effectively so that the outcomes of scrutiny are likely to lead to real improvements for the people of Brentwood.
- 4) To establish working groups (in line with agreed protocols) to undertake the work programme, including setting their terms of reference, the reporting arrangements, and to co-ordinate and review the work of the working groups.
- 5) To receive reports and other evidence from organisations, individuals and partnerships which the committee or working groups considers relevant to their work.
- 6) To deal with those decisions that are subject to the Council's Call In Procedure for decisions made by committees.
- 7) To deal with those issues raised through the 'Councillor Call for Action' scheme in line with agreed protocols and procedures.
- 8) To review matters of local community concern including partnerships and services provided by 'other' organisations such as the National Health Service and Essex County Council.
- 9) To make reports or recommendations to Council or the policy committees on matters which affect Brentwood or the inhabitants of Brentwood.
- 10) To be responsible for scrutiny of the Council's strategic and budgetary framework and its implementation.
- 11) To report annually to Council on the progress of the work programme and to make relevant recommendations.

## 2.8 Licensing Committee

### 1.Appointment and Membership

The Licensing Committee is appointed under section 102 of the Local Government Act 1972 and under section 6(1) of the Licensing Act 2003 and under all other powers.

The Licensing Committee shall consist of 12 elected councillors and when discharging its functions as an ordinary committee under the Local Government Act 1972 it shall be politically balanced. The Council has agreed that when discharging its functions as a committee established under the Licensing Act 2003 it shall be politically balanced.

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## 2. Specific Terms of Reference

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- (a) Except in relation to the statement of Licensing Policy, to discharge all functions conferred upon the council as licensing authority under the Licensing Act 2003.
- (b) Except in relation to the statement of Licensing Policy, to discharge all functions conferred upon the council as licensing authority under the Gambling Act 2005.
- (c) To determine all fees and charges relevant to matters disposed by the Licensing Committee.
- (d) To be responsible for all the Council's licensing and registration functions as detailed in Part B of Schedule 1 Local Authorities (Functions and Responsibilities)(England) Regulations 2000 (as amended) in so far as they pertain to matters concerned with:
  - 1. Trading Requirements
  - 2. All functions relating to hackney carriage drivers and vehicles and private hire drivers vehicles and operators
  - 3. Animal Welfare and Security
  - 4. Skin Piercing, Acupuncture, Electrolysis and Tattooing
  - 5. Sex establishments (including Sex Entertainment Venues (SEV))
  - 6. Pavement Permits
  - 7. Charitable Collections
  - 8. Camping, Caravan Sites and Mobile Homes
  - 9. Scrap Metal
  - 10. Game Dealers
- (e) Any other matters relating to licensing as may be referred to the committee for consideration.
- (f) To hear and determine licensing applications and appeals where objections and /or representations have been received in relation to any of the above functions.
- (g) To manage and monitor the budgets in respect of licensing and vehicle licensing

## **2.9 Planning and Development Committee**

### 1.Appointment and Membership

The Planning and Development Committee is appointed under section 102 of the Local Government Act 1972 and under all other powers.

The Planning and Development Committee shall consist of eleven elected councillors and be politically balanced.

### 2. Specific Terms of Reference

- (a) Town and Country Planning Act 1990 and any related legislation including:-
  - (i) determination of planning applications;
  - (ii) enforcement of planning control;

- (iii) waste land notices, purchase notices, etc.
- (b) Listed Buildings and Conservation Areas Act 1990
  - (i) determination of applications for Listed Buildings and Conservation Area consent;
  - (ii) enforcement of Listed Building and Conservation Area legislation.
- (c) To consider and determine the Council's comments where appropriate on major development outside the Borough when consulted by other Local Planning Authorities.
  - (a) To guide the Council in setting its policy objectives and priorities.
  - (b) To carry out the duties and powers of the Council under current legislation;
  - (c) To develop, implement and monitor the relevant strategies and policies relating to the Terms of Reference of the committee.
  - (d) To secure satisfactory standards of service provision and improvement, including monitoring of contracts, Service Level Agreements and partnership arrangements;
  - (e) To consider and approve relevant service plans;
  - (f) To comply with the standing orders and financial regulations of the Council;
  - (g) To operate within the budget allocated to the committee by the Council.
  - (h) To determine fees and charges relevant to the committee;

To review and monitor the operational impact of policies and to recommend proposals for new initiatives and policy developments including new legislation or central government guidance

- (d) Powers and duties of the local planning authority in relation to the planning of sustainable development; local development schemes; local development plan and monitoring reports and neighbourhood planning

## 2.10 Licensing Sub-Committees

[NB. It is the Licensing Committee itself that appoints a licensing sub-committee \(under section 102\(1\) of the Local Government Act 1972 or under section 10\(1\) of the Licensing Act 2003\) not the Council. The information below appears in the Constitution in order to enable members of the public to access information relating to committees and sub-committees in one document.](#)

To hear and determine applications that do not sit within the scope of delegation to officers, usually where representations have been received either by a third party against grant of a license, or from the applicant against intended refusal or revocation of a license/registration.

Licensing Committee has delegated all functions other than relevant policies and fees setting to officers, with the exception of those other matters as indicated below, which are heard by licensing sub-committee unless otherwise indicated:

---

**Licensing Act 2003 and Gambling Act 2005**

- (a) Determination of any application type where a representation has been received in accordance with the legislation
- (b) Determination of applications for review or expedited review

**Hackney Carriage vehicles and drivers (including enforcement of ranks) and Private Hire vehicles, drivers and operators, with the exception of:**

- (a) Suspension or revocation of drivers' licenses (save for initial suspension under provision of Local Government (Miscellaneous Provisions) Act 1976 S61 (2B) if it appears that the interests of public safety require the suspension to have immediate effect)
- (b) Where representation has been submitted by the applicant/license holder against refusal of any application
- (c) Where representation has been received from an applicant to vary a licensing or pre-licensing condition.

**Scrap Metal Dealing**

- (a) Determination of applications where representations have been received against refusal in accordance with legislative requirements; and
- (b) Consideration of revocation of a license where representations have been received in accordance with legislative requirements

**Street Collections and House to House Collections**

- (a) Appeals against refusal to grant or renew a license

**Licensing of sex establishments**

- (a) Determination of all applications, revocations and appeals.

**Street Trading**

- (a) Determination of applications where representation(s) has been received
- (b) Determination of applications that fall outside of current policy
- (c) Determination of matters relating to revocation of a license

**Acupuncture, Tattooing, Skin and Ear Piercing and Electrolysis**

- (a) Appeals against refusal to grant or renew a registration.
- (b) Revocation of a registration

**Animal Welfare and Security, except for the following:**

- (a) Appeals against refusal to grant or renew a license
- (b) Revocation of a license

**Exercise of Powers under Caravan Sites and Control of Development Act 1960, except for:**

- (a) Refusal and revocation of licenses, (other than urgent refusals which are delegated to officers)

**Mobile Homes**

- (a) Appeals against revocation of a license and/or conditions attached to the grant of a license.

**2.11 Staff Appointments Committee (to meet on demand) has the following functions:**

1.Appointment and Membership

The Staff Appointments Committee is appointed under section 102 of the Local Government Act 1972 and under all other powers.

The Staff Appointments Committee shall consist of new fewer than three councillors and shall be politically balanced.

2.Specific Terms of Reference

- (a) To recommend to Full Council for appointment/designation to the following designated officers posts:

Head of Paid Service  
Section 151 Finance Officer  
Monitoring Officer

and such other posts as may be determined from time to time by Group Leaders in consultation with the Head of Paid Service after first consulting with all Group Leaders.

- (b) To comply with the requirements set out in Chapter 4 of the Constitution (Staff Employment Procedure Rules).
- (c) To agree, review and amend to salary and grading structures for chief officer posts in line with the agreed remuneration policy.

**2.12 Dismissal Appeals Committee (to meet on demand) has the following functions:**

1.Appointment and Membership

The Dismissal Appeals Committee is appointed under section 102 of the Local Government Act 1972 and under all other powers.

The Dismissal Appeals Committee shall consist of no fewer than three elected councillors and be politically balanced.

2.Specific Terms of Reference

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- (a) To consider and determine any appeal by the Head of Paid Service, Section 151 Officer or Monitoring Officer against dismissal by full Council in accordance with a recommendation in a report made by a designated independent person under regulation 7 of the Local Authorities (Standing Orders) (England) Regulations 2001.
  - (b) To consider and determine any allegation or issue of misconduct, incapability or breakdown in trust against the Head of Paid Service, Section 151 Finance Officer, Monitoring Officer or a Deputy Monitoring Officer in accordance with a recommendation in a report made by a designated independent person under regulation 7 of the Local Authorities (Standing Orders) (England) Regulations 2001.

## 2.13 Performance Committee

### 2.13.1 Appointment and Membership

The Performance Committee is appointed under section 102 of the Local Government Act 1972 and under all other powers.

The Performance Committee shall consist of no fewer than three elected councillors and shall be politically balanced.

### 2.13.2 Specific Terms of Reference

- (a) To fully discharge the contractual obligations of the Council in respect of the post of Head of Paid Service including granting permission to work at home, and annual leave.
- (b) To agree targets, objectives and review the performance of the Head of Paid Service.

**PART 3.2 - DELEGATIONS TO STAFF**

Delegations to staff are set out in Appendix A of this constitution



## CHAPTER 4 - PROCEDURAL RULES

### PART 4.1 - COUNCIL PROCEDURE RULES

All of these procedure rules apply to meetings of the Council.

Rules 5, 8, 9 and 13-28 [also](#) apply to meetings of committees and sub-committees.

#### 1. Meetings of the Council

##### 1.1 Types of Council Meeting

There may be three types of Council meeting:

- (a) The Annual Meeting
- (b) Ordinary meetings
- (c) Extraordinary meetings

##### 1.2 Annual Meeting of Council

The Council shall hold an annual meeting in the year of ordinary election of [Members Councillors](#) not earlier than the eighth day [after the day of retirement of Councillors](#) and not later than the twenty first day ~~of the date after the day~~ of retirement of ~~members~~[Councillors](#). [Such Councillors retire on the fourth day following the day of the ordinary election i.e. on the following Monday where an election is on a Thursday.](#)

In any one year where there are no elections to the Council, the annual meeting will be held on a date in May [and at a time](#) to be fixed by the Council.

##### 1.3 Extraordinary meetings

Those listed below may require the Proper Officer (who for this purpose shall be the Chief Executive) to call Council meetings in addition to ordinary meetings:

- (a) the Council by resolution, or
- (b) the Mayor, or
- (c) a Statutory Officer of the authority , or
- (d) Any five Members may together call the meeting and the Chief Executive shall make arrangements accordingly provided they have signed a requisition specifying the business to be considered at the meeting and presented the requisition to the Mayor and he/she has refused to call a meeting or has failed within seven days of the presentation of the requisition to call a meeting.

##### ~~1.4 Council may move to 'In-Assembly'~~

~~The Council may go beyond formal meetings, to which these rules of procedure apply and may move to "In-Assembly" to which these rules of procedure do not apply.~~



~~1.5 This will enable members to invite presentations by other bodies and also enable general discussions, workshop events and opportunities to engage with the public, partners in the public and private sectors and other organisations.~~

## 2. **Agenda**

### 2.1 **Agenda for Annual Meeting**

The Annual Meeting will consider the following:

~~(a)~~ (a) election of the Mayor as the first item of business;

~~(a)~~~~(b)~~ (b) appoint a person to preside if the Mayor and Deputy Mayor are not present or able to act;

~~(b)~~~~(c)~~ (c) receive any apologies for absence from Members;

~~(c)~~~~(d)~~ (d) receive any announcements from the Mayor;

~~(d)~~~~(e)~~ (e) designate a Mayor for the ensuing municipal year (See Appendix B for process of electing a Mayor and Deputy Mayor);

~~(e)~~~~(f)~~ (f) designate a Deputy Mayor for the ensuing municipal year;

~~(f)~~~~(g)~~ (g) receive any declarations of interest from Members and Officers;

~~(g)~~~~(h)~~ (h) Brentwood Borough Council Elections: The Chief Executive will report the results of the elections (election years only);

~~(h)~~~~(i)~~ (i) Political Groups on the Council: The Chief Executive will report receipt of Notices served on him/her by Members under the provisions of the Local Government (Committees and Political Groups) Regulations 1990. (Normally only in election years);

~~(i)~~~~(j)~~ (j) Elect from its members a Leader and Deputy Leader of the Council in any year in which their term of office expires;

~~(j)~~~~(k)~~ (k) to receive the Leader's statement under rule 6;

~~(k)~~~~(l)~~ (l) establish the following and their size and terms of reference;

(i) a committee for the purposes of the Licensing Act 2003

(ii) such other committees as may be necessary for the proper discharge of the functions of the Council;

~~(l)~~~~(m)~~ (m) note the allocation of seats on committees and sub-committees to Members of political groups and those seats to be filled by Members who are not in any political group, appoint Members to those allocated committee seats in accordance with the nominations of the political group Leaders, and appoint Members to the remaining committee seats from among those Members who are not in any political group;

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~~(m)~~(n) appoint any co-opted Members to the committees, and Independent Persons as appropriate;

~~(n)~~(o) determine to which committees substitute Members may be appointed;

~~(o)~~(p) appoint such Chairs and Vice-Chairs of committees as it falls to Council to appoint;

~~(p)~~(q) receive nominations for, and make appointments to, those outside bodies to which the Council is entitled to appoint except where that right of appointment is exercisable only by the Leader;

~~(q)~~(r) approve the Member Allowances Scheme;

~~(r)~~(s) agree the date, time and place of ordinary meetings of Council for the coming municipal year;

~~(s)~~(t) consider any business set out in the notice convening the meeting.

## 2.2 **Agenda for Ordinary meetings of the Council**

Following consultation with the Chief Executive, the order of the agenda will be agreed by the [Mayor-Council](#) having regard to the following:

- (a) to choose a Member to preside if the Mayor and Deputy Mayor be absent;
- (b) any business expressly required by statute to be transacted by the Council;
- (c) to receive any items of urgent business (to be agreed by the Mayor by reason of special circumstances which shall be specified in the minutes).
- (d) to receive any announcements from the Mayor;
- (e) to approve as a correct record the minutes of the last meeting of the Council;
- (f) to answer questions asked by members of the public pursuant to Rule 11;
- (g) to consider reports of the Audit and Scrutiny Committee;
- (h) to receive memorials or petitions (if any);
- (i) for Chairs of committees to answer questions from Members pursuant to Rule 7.
- (j) to receive and consider reports;
- (k) to authorise the sealing of documents so far as the Council's authority is required by statute or this Constitution;
- (l) to consider Notices of Motion in the order in which they have been received.

- 2.3 When considering the budgetary framework at its February/[March](#) meeting, no other business will be considered by Council other than the budget and related proposals.

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- 2.4 The agenda for any Council meetings shall be published normally no later than ten working days before the day of the Council meeting.
- 2.5 Agenda for Extraordinary meetings
- Business at extraordinary meetings of the Council shall be restricted to the following:
- (a) to appoint a Member to preside at the meeting if neither the Mayor nor the Deputy Mayor are present and able to preside;
  - (b) to receive apologies for absence from Members;
  - (c) to receive any declarations of interest from Members and Officers;
  - (d) to consider any business set out in the notice convening the meeting;
  - (e) to consider any matter which, by reason of special circumstances to be specified in the minutes of the meeting, the Mayor considers should be considered at the meeting as a matter of urgency.
- No other business will be transacted.
3. Motions and Amendments
- 3.1 Any one or more Members of the Council may, by notice received by the Monitoring Officer no later than 10.00 am eleven working days before the day of the Council meeting, require the Council to consider a motion about a matter relating to which the Council has powers or duties or which affects the Council's area. A notice of motion may be accompanied by a statement of not more than 200 words setting out the reason for the proposed motion.
- 3.2 A notice of motion may be in more than one part and contain more than one recommendation, but must all relate to the same subject matter.
- 3.3 The Monitoring Officer may reject a notice of motion if, in his/her opinion:
- (a) it does not comply with the requirements of this Rule;
  - (b) the notice of motion is defamatory of an individual, offensive, or otherwise infringes the proper conduct of local government; or
  - (c) the recommendation in the notice of motion would be illegal.
- 3.4 Where the Monitoring Officer rejects a notice of motion, he/she shall inform the Member who submitted the notice as soon as practicable prior to publication of the agenda, and shall not include the rejected notice of motion in the public record or agenda.
- 3.5 The Monitoring Officer shall record all such notices of motion (not including a rejected notice) in the order in which they are received and such record shall be open to public inspection on request.

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- 3.6 The Monitoring Officer shall include all notices of motion and accompanying statements in the agenda for the next relevant meeting of Council in the order received, save that:
- (a) where two or more notices of motion are received from a particular Member for the same meeting, that Member's second notice of motion shall be included after all other Members' first notices of motion, that Member's third notice of motion shall be included after all other Members' second notices of motion, and so on.
  - (b) where he/she considers that the notice of motion, statement or consideration of the notice of motion is likely to result in the disclosure of confidential or exempt information, in which case he/she may group such notices of motion together with other items of business which are, in his/her opinion, likely to involve the exclusion of press and public during their consideration.
- 3.7 The Council shall not debate any motion which would give rise to a significant change to the income of the Council, to its expenditure or to contract terms, unless it has received a report from the Chief Finance Officer or the Monitoring Officer, as appropriate, setting out the legal or financial effect of the motion.
- 3.8 Where a Member submits a notice of motion which would require an accompanying report under Rule 3.7, he/she shall at the same time provide the Chief Finance Officer and /or the Monitoring Officer with sufficient supporting information to enable them to prepare such an accompanying report.
- 3.9 Where a motion which would require an accompanying report under Rule 3.7 falls to be moved without such accompanying report being made available to all Members of Council, the motion shall stand adjourned without debate to the next available meeting of Council.
- 3.10 There will be no time limit for moving and debating motions on notice.
- 3.11 If any matter arises at a meeting to which the Local Government Act 1972 applies by virtue of section 100 (A) (2) as to the appointment, promotion, dismissal, salary, superannuation, or conditions of service or as to the conduct of any person employed by the Council, such matter shall not be the subject of discussion until the Council or committee as the case may be, has decided whether or not the power to exclude the public under section 100 (A) (2) of the Local Government Act 1972 shall be exercised.
- 3.12 A motion or amendment to rescind, or which has the effect of rescinding, a decision made at a meeting of Council within the past six months, may not be moved except in accordance with Rules 8.3.17 and 18 (below) unless upon a recommendation from the Finance and Resources Committee for a variation of the approved Budget or Policy Framework, or where the Monitoring Officer confirms that it is appropriate for the Council to reconsider the matter to comply with law, as a result of a change of law or material change of circumstances.
- 3.13 A motion or amendment in similar terms to one that has been rejected at a meeting of Council in the past six months cannot be moved except in accordance with Rules 8.3.17 and 18 (below) unless upon a recommendation from the Finance and Resources Committee for a variation of the approved Budget or Policy Framework, or where the Monitoring Officer confirms that it is appropriate for the Council to

reconsider the matter to comply with law, as a result of a change of law or material change of circumstances.

#### Amendments

- 3.14 Subject to Rule 3.3, notice of an amendment to a recommendation or motion on the agenda for a Council meeting may be given by two members to the Monitoring Officer up to 12 noon on the day of Council. Only motions which can be moved without notice or amendments to recommendations arising from Officers' reports will be accepted without notice.
- 3.15 No amendment shall be considered with regard to the recommendation of the Finance and Resources Committee for the setting of the Council's budget unless notice of the amendment has been given by two members to the Monitoring Officer by 10.00 am **five working days** before the day of the meeting.

#### 4. Quorum

- 4.1 The quorum of a meeting of the Council will be one quarter of the whole number of members i.e. no less than 10 members. Where more than one third of Members of the Council become disqualified at the same time, then, until the number of Members in office is increased to not less than two-thirds of the whole number of Members, the quorum of the Council shall be determined by reference to the number of Members who remain qualified instead of by reference to the whole number of Members of the Council.

- 4.2 If during any meeting of the Council the Mayer-Chair counts the numbers of members present and declares that there is not a quorum present then the meeting will adjourn. Remaining business shall be adjourned to the next ordinary meeting of the Council or to such other time and date as may be fixed by the MayerChair.

#### 5. Signing the Minutes

- 5.1 The Mayer-Chair of the meeting will sign the minutes of the proceedings at the next suitable meeting.
- 5.2 The Mayer-Chair of the meeting will move that the minutes of the previous meeting be signed as a correct record.
- 5.3 The only part of the minutes that can be discussed is their accuracy and any question as to their accuracy shall be raised by motion.
- 5.4 Minutes will only be signed at the annual meeting or at ordinary meetings.

#### 6. The Leader's Statement

- 6.1 The annual meeting of Council may receive:
- (i) an address from the Leader of the Council for up to **15 minutes**;
  - (ii) a response from the Leader of the main Opposition Group for up to **10 minutes**;

- (iii) a response from each of the leaders of the other political groups for up to **5 minutes** per speaker;
- (iv) a response from any member who is not a member of a political group for up to **3 minutes**.

## 7. Chair Reports and Questions

- 7.1 A brief written report by each committee Chair covering their area of responsibility will be circulated with the agenda for each Council meeting.
- 7.2 Any member may ask a Chair written or oral questions on:
  - (a) any matter included in a Chair's written report; or
  - (b) any matter in relation to which the Council has powers or duties or which affects the Council's area and which falls within the area of responsibility of the Chair's committee.
- 7.3 The period allowed for Chairs' reports, written and oral questions and answers will not exceed **60 minutes** without the leave of the [Mayor-Chair of the meeting](#) and such leave will only be granted in exceptional circumstances.

### Written questions

- 7.4 A member may submit a maximum of 2 written questions under Rule 7.2 if notice in writing of the question has been received by the Monitoring Officer no later than 10.00 am **four working days** before the day of the Council meeting. Questions will be dealt with in the order in which notice was received. A question must relate to a single proposition and may not contain more than one part.
- 7.5 The Monitoring Officer shall copy the question to the Member to whom it is addressed and place them round the table at the next meeting of Council unless, in his/her opinion:
  - (a) the request does not comply with the requirements of Rules 7.2 (a) or (b) or 7.4 above;
  - (b) the question is defamatory of an individual, offensive, discloses confidential or exempt information, or otherwise infringes the proper conduct of local government;
  - (c) the question is substantially the same as a question which has been previously received and answered within the past year, and there has been no significant and relevant change of circumstances since the previous question was answered.
- 7.6 An answer may take the form of:
  - (a) a direct oral answer; or
  - (b) a reference to a publication, where the information is in a publication of the Council or other published work; or

(c) where the reply cannot conveniently be given orally (for example if it is in the form of diagrams), a written answer will be circulated to all Members at the meeting.

- 7.7 Each questioner is entitled to ask one supplementary question arising directly out of either the reply to the original question or where the questioner considers that the reply requires clarification.
- 7.8 If the member who has given written notice of the question is not present when the question is to be put that question may, with the consent of the Mayor, be asked by any other member present. In that case, the questioner will not be entitled to ask a supplementary question.
- 7.9 If the member who has given written notice of the question is not present when the question is to be put, and that question is not put by another member then the Mayor will put the question.
- 7.10 If written notice of a question has been given in accordance with these Rules and the committee Chair is not present when the question is to be put, then either:
- (a) a written answer will be provided subsequently to all members and placed with the minutes; or
  - (b) that question may, with the consent of the questioner, be answered by another committee Chair.
- 7.11 A copy of each question and each written answer will be placed with the minutes.

#### Oral questions

- 7.12 After questions and answers under Rule 7.4 have been dealt with, any member may ask one question of a Chair under Rule 7.2.
- 7.13 No supplementary question shall be put except if the questioner considers that the reply requires clarification and the Mayor gives leave to the questioner to ask a supplementary question.

#### Restriction on number of questions

- 7.14 A Member may submit a maximum of 2 written questions.
- 7.15 A member may only ask one oral question of each Chair.
- 7.16 If there are a number of written questions which, in the opinion of the relevant Chair, deal with the same issue, the Chair will provide one answer.

### **8. Rules of Debate**

#### **8.1 Motions without notice**

The following motions may be moved without notice:

1. to appoint a Chair of the meeting at which the motion is moved;

2. in relation to the accuracy of the minutes;

3. to change the order of business in the agenda;

~~3-4.~~ to require a recorded vote to be taken;

~~4-5.~~ to refer something to an appropriate body or individual;

~~5-6.~~ to appoint any other member to a position of authority, ie Chair of a committee, where a vacancy exists in such office;

7. to appoint a committee or member arising from an item on the agenda for the meeting;

~~6-8.~~ to approve or refuse recommendations of officers or committees and any resolutions following from such approval or refusal;

~~7-9.~~ to withdraw a motion;

10. to amend a motion (subject to Rule 3.3);

~~8-11.~~ to proceed to the next business;

~~9-12.~~ that the question be now put (other than by a member who was the last speaker);

~~10-13.~~ to adjourn a debate;

~~11-14.~~ to adjourn a meeting;

~~12-15.~~ to suspend a particular Council procedure rule for a period not exceeding the duration of that meeting;

~~13-16.~~ to exclude the public and press in accordance with the Access to Information Rules;

~~14-17.~~ to not hear further a member named under Rule 8.4.1 (improper or offensive behaviour) or to exclude them from the meeting under Rule 8.4.2 (continuing improper behaviour);

~~15-18.~~ to give the consent of the Council where its consent is required by this Constitution;

~~16-19.~~ to move an urgent motion where the Mayor-Chair of the meeting has given consent.

## 8.2 **Amendment without notice**

Council may with the consent of the Mayor-Chair of the meeting consider an amendment even though notice of the amendment has not been given in accordance with Rule 3.14, subject to Rule 3.15 providing the amendment arises or emerges

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from the debate or amendments to motions which have been moved without notice, or amendments to recommendations arising from Officers' reports.

### 8.3 **Rules of Debate**

8.3.1 The ~~Mayor~~ Chair of the meeting has a right to require the motion to be put in writing and passed to him/her unless notice of the motion has already been given.

8.3.2 No speeches shall be made until the motion has been seconded.

8.3.3 When seconding a motion or amendment, a member may reserve their speech until later in the debate.

#### 8.3.4 **Content and length of speeches**

(a) The mover of a motion may speak for up to **5 minutes** when proposing a motion and also when exercising the right of reply.

(b) The seconder may speak for up to **3 minutes**.

(c) No speech by any other member may exceed **3 minutes**.

(d) Speeches must be directed to the question under discussion.

8.3.5 When Council is considering its strategic and budgetary framework:

(a) the mover of the motion may speak for up to **15 minutes** and for up to **15 minutes** when exercising the right of reply;

(b) the seconder may speak for up to **10 minutes**;

(c) the Leader of the Main Opposition Group may speak, initially, for up to **10 minutes** and for up to **10 minutes** prior to the mover's right of reply at the close of the debate;

(d) the Leader of any other political group may speak for up to 10 minutes after the main opposer's initial speech; any member who is not a member of a political group may speak for up to 3 minutes.

(e) No speech by any other member may exceed 3 minutes.

#### 8.3.6 **When a member may speak again**

A member who has spoken on a motion may not speak again whilst it is the subject of debate, except:

(a) to speak once on an amendment moved by another Member;

(b) to move a further amendment if the motion has been amended since they last spoke;

(c) to speak on the main issue, if their first speech was on an amendment moved by another member (whether or not the amendment on which they spoke was carried);

- (d) in exercise of a right of reply;
- (e) on a point of order;
- (f) by way of personal explanation;
- (g) by way of providing information or clarification on the matter which is subject of debate.

#### 8.3.7 Amendments to motions

- (a) An amendment to a motion must be relevant to the motion and will either be:
  - (i) to refer the matter to an appropriate body or individual for consideration or reconsideration;
  - (ii) to leave out words;
  - (iii) to leave out words and insert or add others; or
  - (iv) to insert or add words;as long as the effect of (ii) to (iv) is not to negate the motion.
- (b) Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of.
- (c) If the proposer and seconder of a motion accept an amendment then the motion will be debated as amended.
- (d) If an amendment is not carried, other amendments to the original motion may be moved.
- (e) If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which any further amendments are moved.
- (f) After an amendment has been carried, the Mayor will read out the amended motion before accepting any further amendments, and, if there are none, put it to the vote.

#### 8.3.8 Alteration of motion

- (a) A member may alter a motion of which they have given notice with the consent of the Council. The Council's consent will be signified without discussion.
- (b) A member may alter a motion which they have moved without notice with the consent of both the Council and the seconder. The Council's consent will be signified without discussion.
- (c) Only alterations which could be made as an amendment may be made.

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### 8.3.9 **Withdrawal of motion**

A member may withdraw a motion which they have moved.

### 8.3.10 **Right of reply**

- (a) The mover of a motion has a right to reply at the end of the debate on the motion, immediately before it is put to the vote.
- (b) If an amendment is moved, the mover of the original motion has the right of reply at the close of the debate on the amendment, but may not otherwise speak on it.
- (c) The mover of the amendment has no right of reply to the debate on their amendment.

### 8.3.11 **Motions which may be moved during debate**

When a motion is under debate, no other motion may be moved except the following procedural motions:

- (a) to withdraw a motion;
- (b) to amend a motion (subject to Rules 3.3 and 3.4);
- (c) that the question be now put;
- (d) to proceed to the next business;
- (e) to adjourn a debate;
- (f) to adjourn a meeting;
- (g) that the meeting continue beyond three hours and fifteen minutes and for a specified period of time;
- (f) to exclude the public and press in accordance with the Access to Information Rules; and
- (g) not to hear further a member named under Rule 8.4.1 or to exclude them from the meeting under Rule 8.4.2.

### 8.3.12 **Closure motions**

- (a) A member may move, without comment, the following motions at the end of a speech of another member:
  - (i) to proceed to the next business
  - (ii) that the question be now put;
  - (iii) to adjourn a debate; or
  - (iv) to adjourn a meeting.

- (b) If a motion that the question be now put or to proceed to the next business is seconded, the Mayor will put the procedural motion to the vote. If it is passed the Mayor shall give a right to speak to the seconder if they have not already spoken, and will give the mover of the original motion a right of reply before putting their motion to the vote.
- (c) If a motion to adjourn the debate or to adjourn the meeting is seconded, the Mayor will put the procedural motion to the vote.

#### 8.3.13 Questions about the management of the business in a meeting

- (a) A member who is unclear about the process of the management of the business in a meeting or who wants to challenge the way a matter is proceeding shall put a question to the [Mayor-Chair of the meeting](#) about the business management and the [MayorChair of the meeting](#), upon advice from the Chief Executive or the Monitoring Officer, shall determine the appropriate response. The [Mayor's Chair of the meeting's](#) ruling shall be final.
- (b) If the [Mayor-Chair of the meeting](#) is of the view that the whole of the business of a meeting cannot be accomplished satisfactorily in the time available, they may propose to the Council that certain items be held over to the next meeting.

#### 8.3.14 Point of order

A member may raise a point of order at any time. The [Mayor-Chair of the meeting](#) will hear them immediately. A point of order may only relate to an alleged breach of these Procedure Rules or the law. The Member must indicate the rule or law and the way in which they consider it has been broken. The ruling of the [Mayor-Chair of the meeting](#) on the point of order will be final.

#### 8.3.15 Personal explanation

A member may make a personal explanation at any time. A personal explanation must relate to some material part of an earlier speech by the member which may appear to have been misunderstood in the present debate, or outside of the meeting. The ruling of the [Mayor-Chair of the meeting](#) on the admissibility of a personal explanation will be final.

#### 8.3.16 Point of Information or clarification

A point of information or clarification must relate to the matter being debated. If a Member wishes to raise a point of information, he/she must first seek the permission of the [MayorChair of the meeting](#). The Member must specify the nature of the information he/she wishes to provide and its importance to the current debate. If the [Mayor-Chair of the meeting](#) gives his/her permission, the Member will give the additional information succinctly. Points of Information or clarification should be used in exceptional circumstances and should not be used to interrupt other speakers or to make a further speech when he/she has already spoken during the debate. The ruling of the [Mayor-Chair of the meeting](#) on the admissibility of a point of information or clarification will be final.

#### 8.3.17 Motion to revisit a previous decision made within past six months

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A motion or amendment to revisit a decision made at a meeting of Council within the past six months cannot be moved unless the notice of motion is signed by at least **49.5 Members**.

#### 8.3.18 Motion similar to one previously rejected within the past six months

A motion or amendment in similar terms to one that has been rejected at a meeting of the Council in the past six months cannot be moved unless the notice of motion or amendment is signed by at least **49.5 Members**. Once the notice or amendment is dealt with, no one can propose a similar motion or amendment for six months.

#### 8.4 **Members' Conduct**

##### 8.4.1 Member not to be heard further.

If a Member persistently disregards the ruling of the [Mayor-Chair of the meeting](#) by behaving improperly or offensively or deliberately obstructs business, the [Mayor-Chair of the meeting](#) may move that the Member be not heard further. If seconded, the motion will be voted on without discussion.

##### 8.4.2 Member to leave the meeting

If the Member continues to behave improperly after such a motion is carried, the [Mayor-Chair of the meeting](#) may move that either the Member leaves the meeting or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion. It shall be the responsibility of the relevant Group Leader to ensure that the member leaves the meeting.

##### 8.4.3 General disturbance

If there is a general disturbance making orderly business impossible, the [Mayor-Chair of the meeting](#) may adjourn the meeting for as long as he/she thinks necessary.

#### 8.5 **Disturbance by Public**

##### 8.5.1 Removal of member of the public

If a member of the public interrupts proceedings, the [Mayor-Chair of the meeting](#) will warn the person concerned. If they continue to interrupt, the [Mayor-Chair of the meeting](#) will order their removal by the staff from the meeting room.

##### 8.5.2 Clearance of part of meeting room

If there is a general disturbance in any part of the meeting room open to the public, the [Mayor-Chair of the meeting](#) may call for that part to be cleared.

#### 9. **Voting**

##### 9.1 Unless stated elsewhere in this constitution, any matter will be decided by a simple majority of those members present in the room and voting at the time the question was put.

- 9.2 If there are equal numbers of votes for and against, the [Mayor-Chair of the meeting](#) will have a second or casting vote. There will be no restriction on how the [Mayor-Chair of the meeting](#) chooses to exercise a casting vote.
- 9.3 The [Mayor-Chair of the meeting](#) has the discretion to conduct a vote by a show of hands or, if there is no dissent, by affirmation of the meeting. A show of hands will be the normal method of voting at committees and sub-committees.
- 9.4 Where any member requests it immediately after the vote is taken, their vote will be so recorded in the minutes to show whether they voted for or against the motion or abstained from voting.
- 9.5 Where any **five members** rise and request it immediately before the vote is taken, the voting on any question shall be recorded so as to show whether each member present gave his vote for or against that question or abstained from voting. The results of any vote so recorded shall be set out in the minutes of the meeting.

#### Voting on the Budget or Council Tax

- 9.6 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2014 require that immediately after any vote relating to the budget or council tax is taken at a budget decision meeting of an authority there must be recorded in the minutes of the proceedings of that meeting the names of the persons who cast a vote for the decision or against the decision or who abstained from voting. A recorded vote will therefore be taken on any decision relating to the budget or council tax and will follow the procedure set out at Rule 9.5 above.

#### Voting on appointments

- 9.7 If there are more people nominated for any position(s) than there are position(s) to be filled and there is not a clear majority of votes in favour of the required number of people, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person. Where there is an equality of votes for a person to continue in the appointment process, a vote shall be taken between those candidates having an equality of votes to determine which candidate shall continue in the appointment process.

#### Voting on changes to the electoral cycle of the Council

- 9.8 Notwithstanding Rule 9.1, two-thirds of the Members present at an Extraordinary Council meeting convened for the purpose of deciding the matter must vote in favour of a recommendation to change to whole-council elections for the resolution to be approved.

#### Voting to change name of the district

- 9.9 [Notwithstanding Rule 9.1, not less than a two-thirds majority vote of the Members present and voting at an Extraordinary Meeting of the Council specially convened for the purpose of changing the name of the district shall be required to carry such a vote.](#)

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#### Voting to confer honorary titles

- 9.10 Notwithstanding Rule 9.2, not less than a two-thirds majority vote of the Members present and voting at an Extraordinary Meeting of the Council specially convened for the purpose of deciding whether to confer the title of honorary alderman or honorary alderwoman or the title of honorary freeman or honorary freewoman of the Borough of Brentwood shall be required to carry such a vote.

#### Exclusion of Public and Press

- 9.911 Members of the public and press may only be excluded either in accordance with the Access to Information Rules or Rule 8.5 above.

#### **10. Termination of Meetings**

- 10.1 If the business of the meeting has not been concluded by three hours and fifteen minutes after its start, the Mayor must interrupt the meeting. The Member speaking must immediately sit down and the Mayor will then immediately and without debate take a vote on the item under discussion (including any amendment) and shall then dispose of the remaining business in accordance with Rule 10.2 below.

#### Disposal of remaining business

- 10.2 If there are other motions or recommendations on the agenda that have not been dealt with, they are deemed formally moved and seconded and shall be put to the vote by the Mayor without Debate.
- 10.3 During the process set out in Rule 10.2, the only motions which may be moved are:
- (a) that the recommendations be delegated or referred to an appropriate body or individual for decision or report;
  - (b) that the recommendations be deferred to the next meeting;
  - (c) to move a motion that may be moved during debate, under Rule. 8.3.11
- 10.4 Voting shall be in accordance with these Procedure Rules including those relating to recorded votes.
- 10.5 When all the other motions or recommendations have been dealt with, the Mayor will close the meeting.

#### **11. Questions from the Public**

- 11.1 A member of the public resident within the Borough of Brentwood may, through the Mayor, ask any question relating to the business of the Council, provided that notice is received by 10.00 am two working days before the meeting of the question to be asked by the Monitoring Officer at the Town Hall, Ingrave Road, Brentwood, Essex.
- 11.2 The following provisions apply in relation to questions from the public:

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- (a) The number of questions which may be asked by any one member of the public shall be limited to two at any one Council meeting.
  - (b) Such questions shall be included on the agenda for the meeting as the next item of business after the approval of the minutes of the last meeting.
  - (c) Questions given to the Monitoring Officer in accordance with this Procedure Rule shall be submitted to the Council in order of receipt.
  - (d) The member of the public who wishes to ask the question shall be given the opportunity of attending the Council meeting to put the question in person but if not present to ask the question when the item is called, the question shall be deleted from the list of questions to be asked.
  - (e) The question shall be put to the Member named by the questioner.
  - (f) Every question asked pursuant to this Rule shall be put and answered without discussion but the Member to whom the question has been put may decline to answer.
  - (g) An answer may take the form of:
    - (i) a direct oral answer given at the Council meeting which shall be recorded in the minutes, or
    - (ii) where there has been insufficient time to research the answer, a written answer will be sent to the questioner and circulated to all Members of the Council with the minutes of the meeting at which the question was asked.
  - (h) Time for questions from members of the public shall be restricted to **15 minutes in total**. At the expiration of that period of time, any questions which have not been asked shall be answered in writing and the answer placed with the minutes.
  - (i) There shall be no public question time at the Annual Meeting or an Extraordinary Meeting of the Council.
  - (j) The Mayor of the Council at his/her discretion may disallow any question which is scurrilous, vexatious, improper, irrelevant or otherwise objectionable, and shall inform the questioner in writing prior to the meeting with reasons for the decision. Any question requiring the disclosure of "Exempt Information" as defined under Part 1 of Schedule 12A of the Local Government Act 1972 (as amended) shall not be allowed.

## 12. Memorials or Petitions

- 12.1 Memorials or petitions may be presented by any Member of the Council at a meeting of the Council, but such presentation shall not be accompanied by any speech or comment other than to mention the nature of the petition and the number of signatories. Every such memorial or petition shall stand referred, as appropriate, to the committee within whose terms of reference it falls.



12.2 Any Member of the Council presenting a memorial or petition shall be entitled to attend the meeting of any committee, of which he is not a Member to which that memorial or petition is referred and to take part in that meeting's deliberations concerning the subject matter of the memorial or petition but not to vote on the matter.

13. **Disability from taking part in debate arising from arrears of council tax payments**

13.1 Pursuant to the Local Government (Finance) Act 1992, a Member who is more than two months in arrears with payments of their Council Tax may not take part in any Meeting of the Council or its committees, when any of the following matters are to be discussed:

- (a) any matters relating to the Council's responsibilities as the billing and precepting Authority and any discussion on the capping regime;
- (b) anything to do with the setting of the Council Tax;
- (c) any matter which would have an effect on the calculation of the charge and anything else to do with the budget; or
- (d) anything to do with the enforcement of the collection of Council Tax.

13.2 Failure to comply with the above provisions renders a Member liable to prosecution.

**Meetings of the committees and sub-committees**

14. **Meetings**

14.1 The Monitoring Officer will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules. The agenda for a meeting will give the date, time and place of each meeting, specify the business to be transacted, and will be accompanied by such reports as are available.

14.2 The Monitoring Officer may cancel or postpone an ordinary meeting prior to the issue of an agenda for the meeting where, after consultation with the Chair of the relevant committee (or in his/her absence, the Vice Chair), he/she considers that there is insufficient business to transact or where an event occurs which he/she considers would make it inappropriate to hold the meeting on the intended date. If circumstances make it impossible for a meeting to be held as convened, the Monitoring Officer, after consultation with the Chair of the relevant committee (or in his/her absence, the Vice Chair), may postpone an ordinary meeting and hold the meeting on a date to be agreed with the Chair of the relevant committee (or in his/her absence, the Vice Chair).

14.3 The Monitoring Officer may call an extraordinary meeting of a committee, after giving consideration to a request by the Chair of the relevant committee, or in the Chair's absence, the Vice Chair.

15. **Date, Time and Place**

Meetings will be held in appropriate locations for the business and on the date as decided by Council or by the relevant committee. Meetings will start on such date at

7.00 pm unless [Council](#) or the [relevant](#) committee or in exceptional circumstances, the Chief Executive/Monitoring Officer in consultation with the Leader of the Council and the [Leader of the Main Opposition Group](#) agrees otherwise. [Where no meeting is in the agreed calendar of meetings, the Chief Executive/Monitoring Officer may after consulting with the Leader of the Council and the Leader of the Main Opposition Group agree a date, time and place for a meeting of Council or the relevant committee. Should either the Leader of the Council or the Leader of the Main Opposition Group not be available, then reasonable steps shall be taken to consult with their respective nominated deputies.](#)

#### 16. **Election of a Chair**

- 16.1 Except where Council has appointed a Chair and a Vice Chair, every body shall elect a Chair and a Vice Chair at their first meeting after the Council's annual meeting.
- 16.2 In the absence of the Chair, the Vice Chair will be responsible for chairing the meeting. In the absence of the Chair and Vice Chair, a chair for the meeting may be elected for that meeting. The election of the Chair or Vice-Chair shall be conducted by the clerk to the meeting.
- 16.3 Where the Vice Chair takes the chair of the meeting they shall forthwith nominate another Member to act in the role of Vice Chair in assisting with the management of business.
- 16.4 The Chair or Vice Chair of a committee or sub-committee shall hold office until the next annual meeting unless they resign by giving notice in writing to the Chief Executive or cease to be a member of the committee or sub-committee, or the Council, or are removed by Council. [Where such a vacancy arises in-year, then the relevant body shall appoint to that vacancy from among members of the Council.](#)

#### 17. **Openness**

All meetings shall be in public unless the business requires Members to consider 'confidential' or 'exempt' information (as defined in the Access to Information Rules in Chapter 4 of this Constitution) and shall take place at a venue accessible to the public.

#### 18. **Size**

<b>Committee</b>	<b>Membership</b>	<b>Quorum</b>
<a href="#">Finance and Resources</a>	9	2
<a href="#">Housing</a>	10	3
<a href="#">Environment</a>	10	3
<a href="#">Assets and Enterprise</a>	10	3
<a href="#">Business &amp; Town Centres</a>	10	3
<a href="#">Community</a>	10	3
<a href="#">Audit and Scrutiny</a>	8	3
<a href="#">Planning and Development</a>	11	3
<a href="#">Licensing</a>	12	3
<a href="#">Staff appointments*</a>	5	3
<a href="#">Dismissal appeals of statutory officers*</a>	5	3

\* These committees meet on demand.

| **198. Quorum**

All meetings (with the exception of Council) shall be quorate if at least one quarter of the members are present and at least half of those present are members of the Council, provided that in no case shall the quorum be fewer than ~~two-three~~ members of the Council, and, if the meeting is not quorate the meeting will adjourn. The remaining business will be adjourned to the next regular or arranged meeting.

| **1920. Appointments and Substitutes**

| **2019.1** Following Annual Council, the Chief Executive on the nomination of Group Leaders, or in their absence, Deputy Group Leaders, appoints and removes members of committees and sub-committees.

| **2019.2** A substitute Member may attend a particular meeting of the committee, and will have full powers of the committee Member.---

| **2019.3** The names of substitutes shall be announced at the start of the meeting by the Chair. The substitution shall be for the whole meeting and cease at the end of the meeting. If the Member who has been substituted attends the meeting they will only be allowed to speak with the consent of the Chair in accordance with paragraph 24.2.

| **2019.3** The names of substitutes shall be announced at the start of the meeting by the Chair and the substitution shall cease at the end of the meeting.

| **2019.4** Substitutes for quasi judicial/regulatory committees must be drawn from Members who have received training in quasi-judicial/regulatory decision making. If a casual vacancy occurs on a quasi judicial/regulatory committee it will not be filled until the nominated member has been trained.

| **2019.5** All Members are entitled to attend the training provided for members of quasi judicial committees.

| **204. Proportionality**

Membership of committees and sub-committees will reflect proportionality. The Monitoring Officer shall be responsible for calculating the entitlement of each political group to places on committees and sub-committees and shall notify Group Leaders.

| **212. Rules of Debate**

The Rules of Debate that apply to Council meetings set out in Chapter 4.1, may be applied to meetings of committees to the extent that the Chair considers appropriate

| **232. Motions affecting persons employed by the Council**

If any matter arises at a meeting to which the Local Government Act 1972 applies by virtue of section 100 (A) (2) as to the appointment, promotion, dismissal, salary, superannuation, or conditions of service or as to the conduct of any person employed by the Council, such matter shall not be the subject of discussion until the committee or sub-committee as the case may be, has decided whether or not the power to exclude the public under section 100 (A) (2) of the Local Government Act 1972 shall be exercised.

| **2423. Rights to attend and speak**

| 234.1 Any Member may attend any body to which these procedure rules apply, and where the committee or sub-committee has excluded the press and public the Chair will assume the Member has a need to know and may remain during consideration of the item.

| 2423.2 With the exception of statutory committees which have separate procedural rules and with the consent of the Chair, a Member who is not a member of the committee or sub-committee may speak at the meeting. ~~The Member should give prior notification by no later than one working day before the meeting to the Chair and have advised them of the substance of their proposed contribution.~~ The Chair has an inherent discretion to allow Members to speak without notice and their decision is final.

| 243.3 Subject to 234.2 above, the Member may speak at the Chair's discretion, it being the expectation that a member will be allowed to speak on a ward matter.

| **254. Co-option**

Generally a committee or a sub-committee may co-opt a person or persons onto the Committee. Any person so co-opted may speak but not vote.

| **265. Interpretation of Rules of Procedure and Notices**

Except where otherwise provided, the Monitoring Officer will consult with the Chair, Group Leaders and Chief Officers over matters of interpretation and is responsible for making a determination if necessary. The Chair's decision is final.

| **267. Outside Bodies**

| 276.1 Any person appointed by Council to serve on an outside body shall be appointed until they resign, are dismissed or their successor is appointed. Members shall cease to hold appointments on the fourth day after the ordinary day of election unless they are re-elected as a Borough Member at the Election.

| 267.2 The Chief Executive will:

- (a) in consultation with the appropriate Group Leaders, revise as necessary appointments to outside bodies arising as a result of a vacancy or otherwise;
- (b) in consultation with the Leader of the Council and the Group Leaders, agree the allocation of appointments to any new outside bodies or organisations.

| **278. Termination of Meeting**

| 287.1 If the business of the meeting (not being a meeting of Council) has not been concluded by two hours after its start, the Chair must interrupt the meeting. The Chair will then and without debate take a vote as to whether to continue with the meeting for a specified period of no longer than 30 minutes.

| 287.2 Unless a majority of Members vote to continue with the meeting, the meeting shall be adjourned and any remaining business will be considered at a time and date fixed by

the Chair. If he/she does not fix a date, the remaining business will be considered at the next meeting.

- | [287.3](#) If the majority of Members vote to extend the meeting for up to thirty minutes and after that time the business of the meeting is not concluded, the Chair will repeat the process set out in [287.1](#) until the business is concluded or dealt with in accordance with [287.2](#)

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**PART 4.2 - ACCESS TO INFORMATION RULES**

- 1 SCOPE
- 2 PUBLIC ACCESS TO MEETINGS
- 3 PUBLIC NOTICE OF MEETINGS
- 4 PUBLIC ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING
- 5 PUBLIC ACCESS TO COPIES
- 6 PUBLIC ACCESS TO MINUTES ETC AFTER THE MEETING
- 7 PUBLIC ACCESS TO BACKGROUND PAPERS
- 8 EXCLUSION OF PUBLIC ACCESS TO REPORTS
- 9 CONFIDENTIAL INFORMATION – REQUIREMENT TO EXCLUDE PUBLIC ACCESS
- 10 EXEMPT INFORMATION – DISCRETION TO EXCLUDE PUBLIC ACCESS TO MEETINGS
- 11 DISORDERLY CONDUCT OR GENERAL DISTURBANCE – DISCRETION TO EXCLUDE PUBLIC
- 12 MEMBER ACCESS TO INFORMATION
- 13 MEMBER ACCESS TO EXEMPT OR CONFIDENTIAL DOCUMENTS

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## PUBLIC ACCESS TO INFORMATION PROCEDURE RULES

### Introduction

The access to information rules which apply to council meetings, committees and sub-committees of the Council are set out in sections 100A-K and Schedule 12A of the Local Government Act 1972 as amended by the Openness of Local Government Bodies Regulations 2014. The Council believes in making information available to [residents members of the public](#) and will make as much information as possible available as part of its publication scheme.

#### 1. Scope

- 1.1 These rules cover all meetings of the Council, its committees and the ~~sub~~sub-committees and certain officer decisions.
- 1.2 These rules cover Members' rights of access to information and the public's access to information.
- 1.3 These rules do not cover public rights of access to information under the [Data Protection Act 1998](#), Freedom of Information Act 2000, [the Local Government Act 2000](#), [the Environmental Information Regulations 2004](#) and the ~~Data Protection Act 1998~~[Accounts and Audit \(England\) Regulations 2011](#).
- 1.4 These rules do not affect any more specific rights to information contained elsewhere in this Constitution, in any statutory provision or the law.

#### 2. Public access to meetings

- 2.1 Members of the public may attend all meetings subject only to the exceptions in these rules. They have the right to report on meetings, which is defined in The Openness of Local Government Bodies Regulations 2014 as:
  - (i) filming, photographing or audio recording of proceedings;
  - (ii) using any other means for enabling people not present at the meeting to see or hear proceedings as it takes place or at a later date;
  - (iii) reporting or providing commentary on proceedings orally or in writing so that the report or commentary is available as the meeting takes place or later to persons not present;

#### 3. Public Notice of Meetings

- 3.1 The Council will give at least five clear working days' notice of any meeting (excluding the day of publication of notice and the day of the meeting) of the Council, a committee or a sub-committee by posting details of the meeting at Town Hall, Ingrave Road, Brentwood (the designated office) and on its website. The notice will specify the business proposed to be transacted at the meeting.
- 3.2 Members entitled to attend a meeting will receive a summons giving five clear working days' notice to attend and specifying the business proposed to be transacted at the meeting. [This may be sent electronically if the Member has so consented.](#)

3.3 A member who has not been appointed as a member of the Staff Appointments Committee or the Dismissal Appeals Committee will not be able to attend meetings of these committees.

3.4 Except in the case of an item of business which the Chair is of the opinion that, by reason of special circumstances, should be considered as a matter of urgency, no business shall be transacted at a meeting other than that specified in the summons.

4. **Public access to agenda and reports before the meeting**

4.1 The Council will make copies of the agenda and reports open to the public available for inspection at the designated office at least 5 clear working days before the meeting and on its website.

5. **Public access to copies**

5.1 The Council will supply copies of:

- (a) any agenda and reports which are open to public inspection;
- (b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- (c) if the Monitoring Officer thinks fit, copies of any other documents supplied to Members in connection with an item to any person.

5.2 The Council will make available for the use of members of the public present at meetings, a reasonable number of copies of the agenda and of those reports which are open to the public.

6. **Public access to minutes etc after meeting**

6.1 The Council will make available for inspection copies of the following after a meeting electronically:

- (a) the minutes of the meeting excluding any part of the minutes of proceedings when the meeting was not open to the public or which discloses confidential or exempt information (as defined in Rules 9 and 10);
- (b) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
- (c) the agenda for the meeting; and
- (d) reports relating to items when the meeting was open to the public

7. **Public access to background papers**

7.1 List of Background Papers

The author of a report will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in their opinion:



(a) any facts or matters on which the report or an important part of the report is based; and

(b) have been relied on to a material extent in preparing the report

but this does not include published works or those which disclose confidential or exempt information (as defined in Rules 9 and 10).

#### 7.2 Public Inspection

(a) A copy of each of the documents listed will be available for inspection at the same time as the report is available for public inspection.

(b) The Council will make available for public inspection for six years after the date of the meeting one copy of each of the documents on the list of background papers.

#### 8. **Exclusion of public access to reports**

8.1 The Monitoring Officer will exclude access by the public to reports which in his/her opinion contain confidential information as defined in Rule 9.

8.2 If the Monitoring Officer thinks fit, access by the public may also be excluded to reports which in his/her opinion relate to items during which, in accordance with Rule 10 (Exempt Information) the meeting is likely not to be open to the public.

8.3 Such reports will be marked "Not for publication" together with "confidential information" or the exemption relied upon.

8.4 Where an exemption is relied upon, any such report must contain the reasons why, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

#### 9. **Confidential information – requirement to exclude public access**

9.1 The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

9.2 Confidential information means

(a) information given to the Council by a Government Department on terms which forbid its public disclosure or

(b) information the disclosure of which to the public is prohibited by or under another Act or by Court Order.

#### 10. **Exempt information – discretion to exclude public access to meetings**

10.1 The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed provided:

(a) the meeting resolves so to exclude the public, and that resolution identifies the proceedings or part of the proceedings to which it applies;

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- (b) that resolution states, by reference to the descriptions in Schedule 12A to the Local Government Act 1972 (RULE 10.4 below), the description of the exempt information giving rise to the exclusion of the public; and
- (c) that resolution states, by reference to reasons given in a relevant report or otherwise, that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- 10.2 In these circumstances, public access to reports, background papers and minutes will also be excluded.
- 10.3 Where the meeting will determine any person's civil rights or obligations, or adversely affects their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.
- 10.4 Exempt information means information falling within the following categories (subject to any qualification) set out in paragraphs 1-7 below:
1. Information relating to any individual
  2. Information which is likely to reveal the identity of an individual.
  3. Information relating to the financial or business affairs of any particular person (including the authority holding that information)
  4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
  5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
  6. Information which reveals that the authority proposes –
    - (a) To give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
    - (b) To make an order or direction under any enactment.
  7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
- 10.5 **Qualifications**
1. Information falling within paragraph 10.4.3 above is not exempt information by virtue of that paragraph if it is required to be registered under –
    - (a) the Companies Act 1985;

- (b) the Friendly Societies Act 1974;
  - (c) the Friendly Societies Act 1992;
  - (d) the Industrial and Provident Societies Acts 1965 to 1978
  - (e) the Building Societies Act 1986; or
  - (f) the Charities Act 1993
2. Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.
3. Information which –
- (a) falls within any of paragraphs 1 to 7 above; and
  - (b) is not prevented from being exempt by virtue of Rule 10.5 (paragraphs 1 or 2) above, is exempt information if and so long, as in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

#### 11. **Disorderly conduct or general disturbance – discretion to exclude public**

- 11.1 The public may be excluded from a meeting in accordance with Rule 8.5 of the Council's Procedure Rules (Part 4.1 of the Constitution)

#### 12 **Public Rights to access - officer decisions**

- 12.1 Under the Openness of Local Government Bodies Regulations 2014 Officers must record [in writing as soon as reasonably practicable](#) the following types of officer decisions which must then be [made available for public inspection at all reasonable hours at the Town Hall and](#) published on the website, together with any background papers.

- 12.2 These include Officers' ~~delegations~~ [delegated decisions](#):

- (a) under a specific express authorisation; ie where delegated by the Council, Committee or Sub-Committee, or
- (b) under a general authorisation to officers to take such decisions and, the effect of the decision is to:
  - (i) grant a permission or licence;
  - (ii) affect the rights of an individual; or
  - (iii) award a contract or incur expenditure which, in either case, materially affects that relevant local government body's financial position.

**NB.** [The financial threshold as to what "materially affects" the Council's financial position shall be regarded as £50,000 or over unless the particular context otherwise requires a lesser amount.](#)

- 12.3 The above does not include confidential information [or exempt information](#) referred to elsewhere in this ~~section~~ [Part](#).

- 12.4 [The written record referred to in Rule 12.1 shall contain the following information –](#)
- (a) [the date the decision was taken;](#)

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- (b) a record of the decision taken along with the reasons for the decision;
- (c) details of alternative options, if any, considered and rejected; and
- (d) where the decision was made under a specific express authorisation, the names of any member of the Council who has declared a conflict of interest in relation to the decision.

12.5 Where the date of the decision taken and a record of the decision taken along with the reasons for the decision is in or will be in a written record already required to be produced in accordance with any other statutory requirement, the written record required under Rule 12.1 shall not have to contain this information. But such written record does still have to comply with the remaining requirements as to content under Rule 12.4.

12.6 This written record shall be retained by the Council and made available for inspection by the public for a period of six years (beginning with the date on which the decision, to which the record relates, was made).

### **13 Public Rights to access – records of decisions of single councillor exercising ward functions**

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13.1 Where a Member discharges any function of the Council under section 236 of the Local Government and Public Involvement in Health Act 2007 that Member must –  
(a) ensure that a record is made in writing of any decision made or action taken in connection with the discharge of that function; and  
(b) within one month of the date on which the decision is made, or action taken, provide the record to the Council.

13.2 Such a written record shall be open to inspection by members of the public at the Town Hall for a period of six years (beginning with the date on which the decision was made or action was taken). It shall also be made available electronically on the Council's website for public inspection.

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### **Member access to information**

134.1 A Member has the same power of inspection of documents that members of the public possess.

4314.2 A Member also has a statutory right of access to documents provided by section 100F of the Local Government Act 1972. This provides that any document which is in the possession or under the control of the Council and contains material relating to any business to be transacted at a meeting of the council or a committee or a sub-committee must be open to inspection by a member of the council.

4314.3 A member has a common law right to be provided with or to inspect council documents that it is reasonably necessary for them to see in order to carry out their duties as a councillor. A member wishing to exercise this 'need to know' right must inform the Monitoring Officer in writing of the document they wish to see together with information in support of their claim to have a 'need to know'. The decision of the Monitoring Officer as to whether or not the right is demonstrated shall be final.

4314.4 All Members of the Council shall have access to all minutes and records of decisions.

### **154. Member access to exempt or confidential documents**

- 154.1 This Section deals with Member access to documents which contain confidential or exempt information, including agenda papers, background documents and minutes.
- 154.2 Members of a committee or sub-committee will be provided with, and are entitled to receive, copies of confidential or exempt reports.
- 154.3 Subject to Rule ~~134.4~~ and subject to Rule 15.4 below, any Member of the Council may, upon request, receive a copy of a confidential or exempt report or agenda, or inspect an associated background document, on any matter except where:-
- (i) such disclosure of confidential information would breach any obligation of confidentiality; or
  - (ii) where, in the opinion of the Monitoring Officer, discretion should be exercised to withhold disclosure of exempt information relating to any terms proposed or to be proposed to be in the course of negotiations for a contract; or
- ~~the report or document contains information relating to staffing information, where the identity of individual staff would be revealed.~~
- ~~4415.4~~ Any Member wishing to receive or inspect a report or document containing information referred to in Rule ~~4415.3~~ must demonstrate a 'need to know' in accordance with the process set out in Rule ~~4314.3~~ above.

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## **PART 4.3 - BUDGET AND POLICY FRAMEWORK PROCEDURE RULES**

### **1. Decision making framework**

#### **1.1 Budget and Policy Framework**

The Council is responsible, on an annual basis, for the adoption of its Budget and Policy Framework as set out below. The Council may agree to amend the annual timescale in respect of specific policies which have longer term significance, where it considers this to be appropriate.

#### **1.2 Developing the Budget and Policy Framework**

The Finance and Resources Committee is responsible for the formulation of the policy and budgetary framework for approval by Council. It makes recommendations to Council on all strategic financing matters including proposing an overall revenue budget and capital programme and recommending the amount of Council Tax to be set.

- (a) After consulting stakeholders in a manner appropriate to the matter under consideration, the Finance and Resources Committee draws up initial principles and assumptions in relation to any plan, strategy or budget which forms part of the Budget and Policy Framework.
- (b) Once drawn up, the Proper Officer sends copies of the document to the Chair of the Audit and Scrutiny Committee together with dates when the Finance and Resources Committee is to consider them further.
- (c) The Audit and Scrutiny Committee will be convened to formulate responses to the Finance and Resources Committee's initial principles and assumptions and whether any consultation by it, is appropriate.
- (d) The Finance and Resources Committee will finalise its proposals for submission by way of recommendation to the Council taking into account the comments from the Audit and Scrutiny Committee. The report to Council must show the Finance and Resources Committee's response to those comments.
- (e) The Council considers the proposals of the Finance and Resources Committee and may adopt them, amend them or substitute its own proposals in their place. [Voting at a budget decision meeting of the Council shall be by way of a recorded vote.](#)
- (f) The Council's decision shall be approved by a simple majority of votes cast at the meeting. [The minutes of any budget decision meeting of the Council shall record the names of Councillors who cast a vote for the decision or against the decision or who abstained from voting.](#)
- (g) The decision must then be made public in accordance with the Council's Procedures and must be implemented immediately.

#### **1.3 Decisions which are exceptions to the Budget or Policy Framework**

No changes to any policy and strategy which make up the Budget and Policy Framework may be made by the Finance and Resources Committee unless they involve changes necessary to ensure compliance with the law, ministerial direction or government guidance;

1.4 **Virement Arrangements**

- (a) Virements by the Finance and Resources Committee must be taken in accordance with the Procedures.
- (b) In taking steps to implement Council policy, each Committee must not exceed those budgets allocated to different services or projects as approved by the Council. However the Finance and Resources Committee is entitled to vire from the Council's reserves where each individual virement does not exceed **£200,000**. Beyond that limit shall require the approval of the full Council.

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## **PART 4.4 - OVERVIEW AND SCRUTINY PROCEDURE RULES**

### **THE AUDIT AND SCRUTINY COMMITTEE**

#### **1. Composition of the Audit and Scrutiny Committee Audit**

- 1.1 The Council has established an Audit and Scrutiny Committee. In addition to its Audit functions, it undertakes the performance of all overview and scrutiny functions on behalf of the Council ([including relating to crime and disorder](#)).
- 1.2 The Audit and Scrutiny Committee shall be chaired by a Member appointed at Council.
- 1.3 No member may participate in the scrutiny of a decision in which he/she has been directly involved unless he/she attends a meeting for the purpose of making representations, answering questions or giving evidence.
- 1.4 Up to three non-voting co-optees can be appointed to assist the work of the Audit and Scrutiny Committee.

#### **2. Composition of Task and Finish Groups**

- 2.1 The Audit and Scrutiny Committee may appoint such task and finish groups as they consider necessary, in line with agreed protocols, to undertake specific tasks on their behalf.
- 2.2 The Audit and Scrutiny Committee will determine the size and membership of a task and finish group, terms of reference, the date for completion of a task and, where appropriate, appoint a chair from the membership of the Audit and Scrutiny Committee.
- 2.3 Task and finish group members can be drawn from across the Council.

#### **3. Meetings of the Audit and Scrutiny Committee**

There shall be at least four ordinary meetings of the Audit and Scrutiny Committee in each municipal year, with extra-ordinary meetings called when appropriate (for example to deal with a call-in).

#### **4. Quorum**

The quorum for the Audit and Scrutiny Committee shall be at least one quarter of the whole number of the committee provided that in no case shall the quorum of the committee be less than three members.

#### **5. Work Programme**

- 5.1 At the beginning of the municipal year, the Audit and Scrutiny Committee will be responsible for agreeing its own work programme for the year which should relate to its pre-scrutiny role and based on agreed criteria. The Audit and Scrutiny Committee will have particular regard to the Budget, Corporate Plan, Forward Plan, Council policy and significant national issues. The committee will also seek to include the scrutiny of external facing matters that are of significant interest to local communities. It should not include management or staffing issues which is the responsibility of the



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Head of Paid Service, except where standing orders state otherwise. Once the work programme has been agreed for the year, if a Member wishes to add an item to the programme, the committee must agree to the addition after considering a report by the relevant Officers on its feasibility and the resource implications of its inclusion.

- 5.2 In forming and revising the committee's work programme, the chair will engage in regular dialogue with other committee chairs to maintain an up to date overview of up and coming issues.
- 5.3 The Council's other decision making committees may identify issues or studies they wish to be considered by the Audit and Scrutiny Committee.
- 5.4 The Audit and Scrutiny Committee will respond, as their work programme permits, to requests from the Council and its committees to review particular areas of Council activity and where they do so, shall report their findings and any relevant recommendations to the relevant committee.

6. **Consultation and attendance**

- 6.1 The Audit and Scrutiny Committee, or a Task and Finish Group, may invite any person to attend a meeting to address the committee or Task and Finish Group, raise issues of local concern and/or answer questions.
- 6.2 The Audit and Scrutiny Committee, or a Task and Finish Group, may consult and involve the local community and other local public, private and voluntary bodies and organizations.
- 6.3 The Audit and Scrutiny Committee, or a Task and Finish Group, may hear from Councillors, residents, stakeholders, staff, people with specific knowledge or experience, and other persons as it is considered appropriate.
- 6.4 As well as reviewing documentation in fulfilling the Audit and Scrutiny Committee role, the Committee may require any Member of a Committee, the Chief Executive and/or any other Statutory Officer or Head of Service to attend before it to explain in relation to matters within their remit:
- (i) any particular decision or series of decisions;
  - (ii) the extent to which the actions taken implement Council policy.

Its remit does not include those management or staffing issues which ~~is~~ are the responsibility of the Head of Paid Service.

- 6.5 The Member, or Statutory Officer or Head of Service shall be given not less than 10 working days notice in writing of the meeting at which he/she is required to attend and whether any papers are required to be produced to the committee. When the account to be given to the committee requires the production of a report then the Member or Officer concerned will be given sufficient notice to allow for preparation of that documentation.
- 6.6 It is the duty of any Council member or Statutory Officer or Head of Service to comply with any request to attend and answer questions. Reasonable notice will be given by the committee, and in exceptional circumstances where attendance is not possible

on the required date, then a substitute may be asked to attend or the committee shall, in consultation with the person(s) concerned, arrange an alternative date.

#### 7. **Reports from Audit and Scrutiny Committee**

- 7.1 Once it has formed recommendations on proposals for development the Audit and Scrutiny Committee will prepare a formal [written report in accordance with the Local Authorities \(Committee System\) \(England\) Regulations 2012](#) and submit it for consideration by the appropriate committee (if the proposals are consistent with existing budgetary and policy framework) or to the Council as appropriate.
- 7.2 The relevant committee or the Council shall consider the report of the Audit and Scrutiny Committee at the earliest opportunity and ~~wherever possible no later than~~ within two months of it being ~~submitted~~ [received](#).
- 7.3 The Audit and Scrutiny Committee shall produce an Annual Report to be presented to Council summarising its investigation and findings.

#### 8. **Rights of Audit and Scrutiny Committee Members to Documents**

The Audit and Scrutiny Committee has the right to inspect any part of a document that contains exempt or confidential information provided the information is relevant to an action or to a decision being reviewed or scrutinised or intended to be scrutinised by the Audit and Scrutiny Committee. Members must comply with the Member Code of Conduct with regard to not sharing confidential information [or exempt information](#). This provision is not intended to override the restrictions that apply where a Councillor has a prejudicial interest in a matter or document.

#### 9. **Call-in**

- 9.1 All of the rules and procedures relating to call-in seek to recognize that in a Committee System every non-delegated decision is taken in a politically balanced committee, where all Councillors who are members of that committee have the opportunity to question and debate the issues in hand in public forum and participate in the decision-making process. Call-in procedures and practices should recognise this, and the procedures set out intend to allow decisions to be swiftly implemented.
- 9.2 Call-in is intended to be used only in [exceptional circumstances](#), the procedure being seen as a last resort through which Councillors may request scrutiny of a decision they believe to be contrary to the authority's decision making principles. The process cannot be used simply because members disagree with a decision that has been taken.

##### What is a call-in?

- 9.3 Where there is concern about a decision which has just been taken, there is a formal procedure to allow it to be "called in" so members of the Audit and Scrutiny Committee can review [or scrutinise](#) it before the decision is implemented. It is [an key important](#) way of holding decision-makers to account. [Except in very limited circumstances, the Council has decided as a matter of choice that A-a](#) called-in decision [where the request has been validly made](#) cannot be implemented until it has been considered by the Audit and Scrutiny Committee, which can examine the issue and question the decision-taker on the actions taken. The Audit and Scrutiny Committee does not have the power or remit to change or overturn a decision taken

elsewhere.

Who can call in a decision?

- 9.4 Any Councillor can start the call-in procedure. ~~Decisions can be called in by eight individual Councillors.~~

What can be called-in?

- 9.5 Call-in powers relate to ~~non-statutory decision making~~any functions. ~~Subject to the exceptions listed below, any key decision made by the Council's non-statutory decision making committees or a key decision made by an officer with delegated authority may be called in.~~

What can't be called-in?

- 9.6 ~~The following categories of decision cannot be called in:~~

~~1. a decision which is not a key decision, and which has been taken by an officer under delegated powers;~~

~~2. a decision which the decision-taker has certified as urgent (giving reasons) in accordance with the Council's Rules of Procedure;~~

~~3. a decision relating to a matter which has already been the subject of a call-in during the previous six months;~~

~~4. a decision by, or to be taken by, the full Council; or~~

~~5. a decision taken at stage 4 of the call-in procedure (see below);~~

~~6. decisions to award a contract following a lawful procurement process~~

~~7. a decision that has gone through pre-scrutiny, except for where there is evidence that due process has not been followed.~~

- ~~8. Where the Monitoring Officer, after consultation with the Chair of the relevant Audit and Scrutiny Committee, considers the Call In to be frivolous, vexatious or not a proper use of the Call In taking into account the rules set out in the procedural rules.~~

- 9.7 ~~In particular, it should be noted that the Audit and Scrutiny Committee cannot scrutinise individual decisions made by, or on behalf of, the regulatory / quasi-judicial committees of the Council, eg decisions relating to development control, licensing, registration, consents and other permissions. Nor can it scrutinise decisions taken by committees or sub-committees relating to individual members of staff, or recommendations by the Independent Remuneration Panel.~~

- 9.86 ~~Furthermore, a) Although they may be key important decisions (and included in the Forward Committee Planned Programme), decisions taken by the committees when preparing annual budget or new policy proposals for submission to the full Council will not be subject to call-in are not required to be delayed and can be implemented without awaiting review or scrutiny. In these circumstances the full Council is~~

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responsible for the final decision and the Audit and Scrutiny Committee will be consulted, even if it has been involved earlier in the process.

When can a decision [\(or other action\)](#) be called-in?

9.97 It is important that the call-in process is not abused, nor causes unreasonable delay; the main tool of the Audit and Scrutiny Committee to improve the delivery of policies and services should be detailed reviews, rather than call-ins.

9.408 Call-ins should be reserved for exceptional circumstances. Broadly, a decision [\(or other action taken\)](#) ~~can~~ should only be [requested to be](#) called-in when Councillors:

- (a) have evidence that it may be contrary to the normal requirements for decision-making;
- (b) have evidence that it may be contrary to the Council's agreed policy framework and/or budget;
- (c) lack reasonable and significant information from the decision-taker to explain why it was taken.

9.944 Any ~~key~~ decision [\(or other action taken\)](#) which is subject to potential call-in cannot be implemented until the end of the call-in period [unless relating to the annual budget or new policy proposals for submission to the full Council](#). The call-in period lasts for **five working days** after relevant ~~minutes record of the decision has been~~ are published by ~~Governance Committee~~ Services.

9.4210 ~~Minutes of the committees~~ [Records of decisions](#) will be published [as soon as practicable and in any event](#) no later than three clear working days after the ~~meeting~~ decision. This means that the call-in period will expire at 4:30pm five clear working days after the publication of the ~~minutes record of decision~~ (adjusted for bank holidays as appropriate). Call in requests received after this will not be accepted. For example if the ~~minutes record of decision were was~~ published by 9am on Monday, the call in period would expire at 4.30pm on the following Monday assuming there were no bank holidays in that week.

9.113 Call-in requests may be submitted prior to publication of the ~~minutes~~ record of decision, however validity will not be determined until the ~~minutes~~ record of decision are available for consideration alongside the call-in request.

## 10. **The call-in procedure itself follows four stages**

### STAGE 1

10.1 A valid call-in request must be submitted in accordance with the current rules in the Constitution. The request must say who is making the call-in and to which decision [\(or other action to which\)](#) it relates. It must also give:

- (a) reasons and provide evidence in accordance with paragraph 9.40-8 to support why the decision [\(or other action taken\)](#) is being submitted for call-in;
- (b) what action the caller-in would like to see the decision-maker take to address the concerns outlined in the call-in, or how the original decision [\(or other action](#)

taken) should be varied; and

- (c) details of attempts the caller-in made to discuss the issue with the relevant Chairperson in advance of calling the decision in (or other action in). If reasonable attempts were not made in advance, the call in will not be accepted.

A pro-forma will be made available.

- 10.2 Requests may also be submitted by electronic mail, fax or by telephone. If the call-in is to be submitted by e-mail, ~~only one~~this is acceptable if from the Councillor's e-mail address and need submit the actual form/request is attached. However, individual e-mails (or letters) in support of the request ~~must may~~ also be submitted by the other Councillors specified on the form before the end of the call-in period. Call-ins submitted by fax or telephone must be followed up in writing ~~with the required number of signatures and signed by the Councillor making the request~~ before the end of the call-in period.
- 10.3 In the event of lack of clarity about the validity of a call-in, the Monitoring Officer (in consultation with the Chair of Audit and Scrutiny Committee and the Chief Executive) will decide.
- 10.4 In exceptional cases, where there is clear evidence that a delay to the implementation of a decision would lead to a specific and significant financial or reputational harm to the Council, a call-in request may be implemented prior to consideration by the Audit and Scrutiny Committee~~refused~~.
- 10.5 Where a submitted call-in request is considered as invalid, the Councillor(s) requesting the call-in will be written to by the Monitoring Officer explaining the reasoning for the decision.

## STAGE 2

- 10.6 When the officers receive a valid call-in request with respect to a decision (or other action taken), then that decision may not be implemented until that decision has completed the call-in procedure (unless the exceptions in Rule 9.9 and 10.4 apply). The officers will convene a meeting of the Audit and Scrutiny Committee to take place within 10 working days of the receipt of a valid call-in request. In setting the date of the call-in hearing, all efforts will be made to maximize attendance by Audit and Scrutiny Committee members, relevant committee chairs and required officers and other witnesses. The chair of the relevant committee will be kept informed and invited to address the Audit and Scrutiny Committee. Councillors who have requested the call-in will have the right to address the committee when it deals with the issue.

## STAGE 3

- 10.7 The Audit and Scrutiny Committee will consider the called-in decision (or other action taken) and decide to take one of the following courses of action (the Audit and Scrutiny Committee's decision should not be adjourned or delayed without an exceptional reason):
- (1) if not implemented, to refer the matter straight to Council to exercise the Audit and Scrutiny Committee's powers of review and/or scrutiny;

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(2) if not implemented, to review and/or scrutinise the decision made, or other action taken, in connection with the discharge recommend that the decision be reconsidered by the person who made it;

(3) to review or scrutinise the decision allow the decision to be implemented without further delay (if not already implemented).

(2) to refer the decision back to Council or the relevant committee together with the observations of the Audit and Scrutiny Committee. The Council or committee will then take the final decision, and that decision may not be called in.

(3) to request the decision-making person or committee Chair to allow further time for the Audit and Scrutiny Committee to consider the issue and make observations at a later date.

(4) referral to Monitoring Officer (S106 officer) and/or S151 officer for further consideration (for exceptional / complex matters).

#### STAGE 4

##### Reference back to Committee

10.8 Where the Audit and Scrutiny Committee decides to refer the decision back, the Council or the relevant committee must reconsider the decision in the light of any observations of the Audit and Scrutiny Committee.

10.9 Where the Audit and Scrutiny Committee has requested more time to consider an issue, the Council and the decision-making committee Chair must have regard to the urgency, and to the Budget and Policy Framework Rules, when deciding whether to implement the decision.

##### Reference to Monitoring Officer and/or Section 151 Officer

10.10 The Audit and Scrutiny Committee may, in exceptional circumstances, refer the called-in decision to the Monitoring Officer (S106 officer) and/or the S151 Officer if it considers it to be contrary to the policy framework or budget. This should only refer to complex matters that cannot be adequately examined within the call-in hearing itself. The relevant officer(s) will then submit a report on the matter to the next meeting of the relevant committee. A copy of this report will be sent to all members of the Council. The Council has decided as a matter of local choice that ~~No~~-no action may be taken in respect of the decision or its implementation pending that meeting. If, in that report, the Monitoring Officer (S106 officer) and/or the S151 Officer is of the view that a decision referred to him/her by the Audit and Scrutiny Committee is not a departure from the policy framework or budget, the decision may be implemented immediately. A report to this effect will be submitted to the Audit and Scrutiny Committee for information. If, however, a referred matter is deemed to be a departure from the policy framework or the budget by the Monitoring Officer (S106 officer) and/or the S151 Officer, the relevant committee has two options.

10.11 Firstly, it may choose to adjust its decision to bring it within the policy framework or

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budget, in which case it can then be implemented. In these circumstances, the committee would submit a report to the next meeting of the Audit and Scrutiny Committee explaining its actions.

10.12 Secondly, if the committee does not wish to adjust its original decision, it must prepare a report for the full Council. This report must include the views of the Audit and Scrutiny Committee. No action may be taken in respect of the decision or its implementation until the Council has met to consider the matter.

11. **Reference to Full Council**

11.1 Subject to the provisions above, the Audit and Scrutiny Committee may require that any called-in matter which has been deemed to be (and remains) contrary to the policy framework or budget is referred to the full Council. The report to the full Council will set out the views of the relevant committee and the Audit and Scrutiny Committee and the advice of the Monitoring Officer and/or the S151 Officer.

11.2 The Council may:

- decide that the decision is within the existing policy framework and/or budget (in which case it can be implemented); or
- amend the financial regulations or policy concerned to encompass the decision (in which case it can be implemented); or agree that the decision is contrary to the policy framework or budget and require the committee to reconsider the matter in accordance with the advice of the officer(s).

12. **Guidance for Call-in hearings**

12.1 The following guidance set out in paragraph 12-14 is intended to assist the conduct of call-in hearings and the preparation work carried out in the run-up to such a hearing.

Prior to the Call-in

12.2 A meeting will take place between the Chairperson and Vice Chairperson of the Audit and Scrutiny Committee, Chairperson of the relevant committee, relevant officers, the Corporate & Democratic Services Manager and the caller-in, at which a definitive list of witnesses for the call-in hearing will be drawn up, together with a list of questions for each witness, as appropriate.

12.3 A statement from the Chair of the decision-taking committee may be published with the agenda for the meeting.

12.4 A caller-in's statement will be published with the agenda for the meeting, should the caller-in wish to provide such a statement.

12.5 The caller-in and relevant committee Chairperson will be invited to the meeting, together with any other parties relevant to the decision-making process, for example Chairs of other committees or officers.

12.6 Any other relevant internal or external witnesses will be invited to the meeting.

12.7 Five working days notice of a request to attend the meeting will be given to all

witnesses, or as soon as possible thereafter. If a list of questions is to be produced, five working days notice of the questions planned will also be given to witnesses.

- 12.8 Any witness at a call-in will be invited to speak for no more than three minutes.
- 12.9 Prior to the meeting any Councillor who may have a conflict of interest should declare that conflict, and will be given relevant advice by the Monitoring Officer.
13. **The Call-in meeting**
- 13.1 The call-in will be the first item of business on the agenda, in order that witnesses are not kept waiting.
- 13.2 Witnesses will have reserved seats around the table with the committee if space permits, but if there are a large number of witnesses or other attendees at the meeting; they may be required to wait in a separate seating area or the public gallery.
- 13.3 The caller-in will be invited to make a presentation outlining his or her main reasons for calling in the decision. A question and answer session will follow.
- 13.4 The decision-taker will be invited to make a presentation outlining his or her main reasons for making the decision. A question and answer session will follow.
- 13.5 Any other parties relevant to the decision-making process, for example Chairs of other committees, or officers, will be invited to make presentations outlining their reasons for any recommendations on the issue concerned, or in the case of officers their reasons for any recommendations or advice to Councillors. Question and answer sessions will follow.
- 13.6 Witnesses will be invited to make a presentation to the committee without interruption for up to three minutes each, following which there will be a question and answer session.
- 13.7 Witnesses will be given the opportunity to add any points of clarification before any resolution or recommendation is moved.
- 13.8 The caller-in will be given the opportunity to add any points of clarification before any resolution or recommendation is moved.
14. **Call-in Checklist**

The above rules and criteria have been brought together in the checklist of questions (or tests). Councillors should use this checklist when they are considering a call-in. Questions 2 - 4 should also be used by report authors to test draft reports for completeness.

<p>1. Can the decision actually be called- in?</p> <p><b>If the answer to any of questions 1(a)-(g) is "yes" then the decision can NOT be called-in.</b></p>	<p>a) Does it relate to a statutory function?</p> <p><del>b) Was it a non-key decision taken by an officer under delegated powers?</del></p> <p><del>c) Was it classified as an urgent decision?</del></p> <p><del>d) Has this issue been called in in the last 6 months?</del></p> <p><del>e) Does the decision relate to an existing call in (ie decisions taken in relation to a reference back)?</del></p> <p><del>f) Does the decision relate to the formulation of a policy or budget matter which requires full Council approval?</del></p>
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	<del>g) Was it a decision taken by, or to be taken by, full Council?</del>
2. Was the decision in accordance with the Council's policy framework?	a) What is the relevant policy or strategy? b) Is the decision contrary to that policy? c) If yes, how? (Evidence must be provided at the time of the call in.)
3. Was the decision in accordance with the agreed budget or budget procedures?	a) Is there funding for the proposal in an agreed budget/capital programme? (If yes, no call in can be evoked on this ground) b) If no, have the rules for virement and supplementary estimates been observed?
4. Was the decision taken in accordance with the Council's Constitution and the principles of decision-making?	a) Does the decision comply with the Council's Constitution, ie <ul style="list-style-type: none"> <li>• Articles of Constitution</li> <li>• Scheme of Delegation</li> <li>• Rules of Procedure</li> <li>• Codes and Protocols</li> </ul> b) Did the decision taken show a reasonable regard for the following: <ul style="list-style-type: none"> <li>• The presumption in favour of openness and transparency.</li> <li>• The need for consultation with interested parties.</li> <li>• The need to take account of relevant professional advice from appropriate officers.</li> <li>• The need for clarity of aims and desired outcomes.</li> <li>• The need to identify the range of options considered.</li> <li>• The need to give reasons and explanation for a decision.</li> </ul>

15. ~~Councillor Call for Action Protocol~~Reference of matters to the Audit and Scrutiny

Introduction

- 15.1 The ~~'Councillor Call for Action' (CCfA)~~right of referral was introduced under ~~Section 119 of the Local Government and Public Involvement in Health Act 2007~~the Local Authorities (Committee System) (England) Regulations 2012. The ~~Act~~Regulations enables any member of the Council to refer to the Audit and Scrutiny Committee any certain local government matters (under the jurisdiction of the council where the CCfA is being considered) or any crime and disorder matter which affects their ward/division. Referral is the right for an item of business to be placed on the agenda and discussed at a meeting of the Audit and Scrutiny Committee (or its sub-committee) when sitting in its overview and scrutiny mode.
- 15.2 The extent of the power to refer a matter depends on the status of the Councillor i.e.  
(a) any member of the Audit and Scrutiny Committee may refer any matter which is relevant to the functions of the Audit and Scrutiny Committee in its role as an overview and scrutiny committee;

(b) any member of a sub-committee of the Audit and Scrutiny Committee may refer any matter which is relevant to the functions of that sub-committee in its role as a sub-committee of an overview and scrutiny committee; and

(c) any member of the Council (who is not a member of the Audit and Scrutiny Committee) may refer any matter which is relevant to the functions of the Audit and Scrutiny Committee in its role as an overview and scrutiny committee and is not an 'excluded matter', is available only where the matter is of direct concern to the ward that the Councillor represents. A Councillor can refer a matter even if no citizen has asked him/her to consider it, and there is no requirement for Councillors in multi-member wards to agree – any of them can refer a matter.

#### Limitations

- 15.3 It is important to recognise that CCfA the right of referral is not guaranteed to solve a given problem. CCfA The referral can provide a method for discussing such problems and, through discussion, trying to overcome them.

#### Issues excluded from referral as a CCfA

- 15.4 The regulations exclude the following matters from referral by a Member who is not a Member of the Audit and Scrutiny Committee or its sub-committee (operating in overview and scrutiny mode) as a CCfA:

- (a) a 'local crime and disorder matter'; or  
(b) a matter of any description specified in an order made by the Secretary of State.

- 15.5 An 'excluded matter' in relation to a 'local crime and disorder matter' is a matter concerning:-

- (i) crime and disorder (including in particular forms of crime and disorder that involves antisocial behaviour or other behaviour adversely affecting the local environment), or  
(ii) the misuse of drugs, alcohol and other substances, which affects all or part of the electoral area for which the member is elected or any person who lives or works in that area.

- 15.6 A matter is an 'excluded matter' within the current order made by the Secretary of State if it is a matter which is:

- (i) vexatious, discriminatory or not reasonable to be included in the agenda for, or to be discussed at, a meeting of the overview and scrutiny committee or at a meeting of a sub-committee of that committee; or  
(ii) any matter relating to a planning decision; or  
(iii) any matter relating to a licensing decision; or  
(iv) any matter relating to a person in respect of which that person has a right of recourse to a review or right of appeal conferred by or under any enactment [unless notwithstanding it is a matter within (ii) (iii) or (iv) above, the matter consists of an allegation that a function has not been discharged at all or that its discharge has failed or is failing on a systemic basis in which circumstances it may be referred].

#### Individual complaints concerning personal grievances or commercial issues.

- 15.5 Any matter relating to an individual or entity where there is already a statutory right to a review or appeal (other than the right to complain to the Local Government Ombudsman), for example:

- Planning and licensing applications and appeals;

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- ~~Council Tax/Housing Benefits complaints and queries;~~
- ~~Issues currently under dispute in a court of law;~~
- ~~Any matter which is vexatious, discriminatory or not reasonable to be included on the agenda for, or to be discussed at, a meeting of the Audit and Scrutiny Committee or any of its sub-committees.~~

~~15.6~~ 15.6 ~~Where a Member is considering whether or not to exercise the power in Rule 15.2(c) above, the Member shall have regard to any relevant guidance issued by the Secretary of State.~~

~~15.67~~ 15.67 A referral, provided it is not an excluded matter (see above), will ensure that the matter is included on the agenda of the Audit and Scrutiny Committee. It is then up to the members of the committee to decide whether or not to take the matter further. A referral made to the Audit and Scrutiny Committee is seen as being the end of the CCfA process (**the last resort**) and not the first step.

~~16.~~ 16. ~~**Steps to be taken prior to making a Councillor Call for Action referral**~~

~~16.1~~ 16.1 ~~Prior to a Councillor referring a matter as a CCfA to the Audit and Scrutiny Committee, a Councillor **must** have tried to resolve the issue/problem themselves using all mechanisms and resources available to them at ward level. Councillors should:~~

- ~~If a local crime and disorder matter, raise the issue through the Community Safety Partnership to find a way to resolve the issue.~~
- ~~Ensure that all relevant partner organisations have been informed of the issue and given enough time to resolve it, for example through formal letters written on behalf of constituents, discussion at public meetings, petitions, communication with local MPs and Councillors in other authorities and so on.~~
- ~~Ensure that all relevant internal potential routes to solution have been followed, for example specific discussions with officers and/or members, questions at committees, motions on the agenda at full Council and so on.~~
- ~~Ensure that this is not an issue that is currently being or should be pursued via the council's complaints procedure.~~
- ~~Ensure this is not a matter which has previously been ruled out by the Administration (in the last 12 months).~~
- ~~Ascertain whether or not any other form of local scrutiny is investigating the issue, for example Essex County Council.~~

~~176.~~ 176. ~~**How to make a Councillor Call for Action referral**~~

~~176.1~~ 176.1 If the issue/problem ~~is still~~has not resolved informally, the Councillor can refer it to the Audit and Scrutiny Committee as a 'Councillor Call for Action'~~referral~~. To do this the Councillor should firstly speak to the relevant Chairperson about their intention to see if any other route can be taken etc. If not, complete and submit to the Corporate

and Democratic Services Manager a [CCfA-Request Form](#) outlining what the issue is and what steps have been taken towards a resolution. The request form for a [CCfA](#) includes:

- The name of the Councillor and ward they represent.
- Title of the [CCfA-referral](#) and date of submission.
- A brief synopsis of what the main areas of concern are.
- Which organisations have been contacted in trying to resolve the issue and people and timeframes to respond.
- Responses received from those organizations.
- Whether the committee has considered a similar issue within the last 12 months and how this issue differs from that.
- Whether the issue should be considered through the council's complaints procedure.
- Whether the issue relates to a quasi-judicial matter such as development control or licensing.
- Whether a similar or related issue is the subject of a review on the current work programme.
- Whether the issue is currently being looked at by another form of local scrutiny.
- The potential for scrutiny of the issue to produce real improvements.
- Whether the [CCfA-referral](#) is currently the subject of legal action by any party (to your knowledge) or is being examined by a formal complaints process.
- Whether there are any deadlines associated with the [CCfA-referral](#) of which the Audit and Scrutiny Committee needs to be aware.

[176.2](#) Members are required to produce all their evidence regarding actions already taken in relation to the issue, and responses received from organisations contacted, at the time of submitting the [CCfA-Referral](#) Request Form.

[176.3](#) The Corporate and Democratic Services Manager will receive the referral form, log it to track its progress and assess the issue to ensure that it is not a matter excluded from referral to Audit and Scrutiny Committee.

[167.4](#) The Corporate and Democratic Services Manager, if necessary, advise the member that more evidence should be added in any section of the [CCfA-referral](#) submission, although it will be the decision of the referring Councillor as to whether he or she chooses to provide more evidence, or wishes to submit the form in its original state.

[176.5](#) The Corporate and Democratic Services Manager will inform the Chairperson of the Audit and Scrutiny Committee that the item will be included on the next committee agenda. The Councillor will be informed whether or not their referral has been

successful. Officers and Chairs of cited in the submission will be contacted to notify them of the [CCfA-referral](#), and given the opportunity to respond to any statements made about their involvement in the matter.

176.6 In the event of lack of clarity about the validity of a [CCfA-referral](#) submission; the Monitoring Officer (in consultation with the Chair of Audit and Scrutiny Committee and the Chief Executive) will decide.

176.7 A successful referral will ensure that the [CCfA-referral](#) will be placed on the next agenda of the Audit and Scrutiny Committee. It is then up to the members of the committee to decide whether or not to take the matter further.

#### 18. **Decision of the committee whether to take the matter further**

18.1 In deciding whether or not to take the matter further the committee will consider:

- Anything that the Councillor has done in relation to this matter.
- Representations made by the Councillor as to why the [committee-Committee](#) should take the matter up. (Councillors have the option of either presenting their [CCfA-referral](#) form without supporting papers, or of preparing a report setting out their views. Any reports prepared by Councillors will be circulated with the agenda alongside the [CCfA-referral](#) form).
- The Council's Corporate Plan and priorities and whether the matter / proposals contravene these, along with financial implications of the proposals.

18.2 The criteria the [eCommittee](#) will use to decide whether or not to take the matter further include:

- Is the committee satisfied that all reasonable attempts have been made to resolve the issue by the ward Councillor? And do the responses received by the referring Councillor demonstrate that the matter is not being progressed?
- Has the Council considered a similar issue in the last 12 months – if yes have the circumstances or evidence changed?
- Is there a similar or related issue which is the subject of a review on the current work programme? It may be more appropriate to link the new issue to an existing review, rather than hold a separate CCfA hearing. Relevant time pressures on resolving the [CCfA-referral](#) should be taken into account.
- Have all relevant service areas or partner organisations been informed and been given enough time to resolve the issue? What response has the Councillor received?
- Is this a case that is being or should be pursued via the council's corporate complaints procedure?
- Is it relating to a 'quasi-judicial' matter or decision such as planning or licensing?
- Is the issue part of an individual's own personal agenda (an issue of genuine

local concern should have an impact on the local community).

- Is this an issue currently being looked at by another form of local scrutiny, for example Essex County Council?
- And, as with all scrutiny, does the matter referred have the potential for scrutiny to produce recommendations which could realistically be implemented and lead to improvements for anyone living or working in the referring member's ward?

| 18.3 In considering the [CCfA referral](#), the Audit and Scrutiny Committee may invite the relevant lead member, Chief Executive, Director, Head of Service or external organisation to discuss the issue with the committee and answer any questions.

| 18.4 If the committee decides not to accept the [CCfA](#) referral it must inform the Councillor and provide reasons.

| 18.5 If the committee decides to accept the [CCfA](#) referral, it must decide how it intends to take the matter forward and include the [CCfA referral](#) in its work programme. This could include:

Before holding a formal hearing:

- | 18.6
- Asking the service area(s)/partner organisation(s) to respond to the [CCfA referral](#)
  - Setting up a research group to undertake a more in-depth review.

At formal hearing

- 18.7
- Asking for further evidence and/or witnesses to be brought to a future meeting then making recommendations to the relevant committee / partner organisation.

Potential outcomes

18.8 Following a formal hearing, there are a number of potential outcomes from the Audit and Scrutiny Committee meeting:

| 18.9 The [committee Committee](#) could determine not to make a report or recommendations (perhaps because it is not considered the right time to consider a particular issue), with the ward Councillor notified in writing;

| 18.10 The [committee Committee](#) could determine that it is a complex issue that requires further investigation and commission a scrutiny review of the issue.

| 18.11 The [committee Committee](#) could write a report and make recommendations on the CCfA to a committee and/or relevant partners.

| 18.12 Once the [committee Committee](#) has completed its work on the [CCfA](#) referral the member who made the [CCfA](#) referral will receive a copy of any report or recommendations made. The report will also be made available on the council's website, unless the matter was an exempt item, in which case the report cannot be made public.

## 19. Timescales

| 19.1 Once a [CCfA referral](#) has been assessed as not being a matter which is excluded

from referral to Audit and Scrutiny Committee, the item will be included on the next committee agenda.

- 19.2 If the committee agrees to take the matter forward, the hearing will usually be held as an item on the next available agenda. In exceptional circumstances, for example where there are unavoidable time constraints, a separate meeting may be convened.
- | 19.3 Should a [CCfA-referral](#) hearing result in recommendations to the relevant committee being made, the committee will usually respond to the recommendations, setting out any action it intends to take, within 28 days of the date of the committee agenda on which the recommendations were placed.
- | 19.4 Should a [CCfA-referral](#) hearing result in recommendations to partner organisations, such organisations will also be requested to make a response to the recommendations, although they are under no legal obligation to do so.

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## PART 4.5 - FINANCIAL REGULATIONS

### 1. Background

- 1.1 The Council is committed to providing good quality services to the residents of the area and has a requirement for strong financial governance and must ensure that we deliver value for money.
- 1.2 The Council's governance structure is laid down in its ~~constitution~~ Constitution, which sets out how the council operates, how decisions are made and the procedures to be followed. As part of the ~~constitution~~ Constitution this document explains the financial controls in place for the Council.

### 2. Status of Financial Regulations

- 2.1 Financial regulations provide the framework for managing the Council's financial affairs. They apply to every Member and Officer of the Council and anyone acting on its behalf.
- 2.2 The regulations identify the financial responsibilities of Council, Finance and Resources Committee, Audit and Scrutiny Committee, the Chief Executive (Head of Paid Service), the Director of Strategy and Corporate Services (Section 151 Officer) and Heads of Service.
- 2.3 Only certain of These ~~these~~ responsibilities can be delegated. Where this is the case Officers shall maintain a written record. Where decisions have been delegated or devolved to another Officer reference in the regulations shall be read as referring to them.
- 2.4 All Members and staff have a general responsibility for taking reasonable action to provide for the security of the resources under their control, and for ensuring that the use of these resources is legal, is properly authorised, and provides value for money.
- 2.5 The Director of Strategy and Corporate Services is responsible for maintaining a continuous review of the financial regulations and submitting any additions or changes necessary to Council for approval. The Director of Strategy and Corporate Services is also responsible for reporting, where appropriate, breaches of these financial regulations to Council and/or Finance and Resources Committee
- 2.6 Heads of Service are responsible for ensuring that all staff in their service areas are aware of the existence and content of the Council's financial regulations, the detailed financial procedures and guidance issued. They must also ensure that staff understand the requirement to comply with these financial rules. The Director of Strategy and Corporate Services is responsible for ensuring that a current version of the financial regulations and procedures is available for reference on the Council's intranet and public website.
- 2.7 The Director of Strategy and Corporate Services is responsible for issuing advice and guidance to underpin the financial regulations.



- 2.8 Members, officers and others acting on behalf of the Council including contractors and consultants are required to follow all guidance issued.

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## FINANCIAL MANAGEMENT

### Introduction

- 1.1 Financial management describes the system of financial control throughout the Council and covers all financial responsibilities for the Council, including budget setting and integrating medium term policy planning with financial planning.
- 1.2 All staff and Members have a duty to abide by the highest standards when dealing with financial issues. This is helped by ensuring everyone is clear about the standards to which they are working and the controls that are in place to ensure that these standards are met.
- 1.3 **Council**
- Council is responsible for agreeing the strategic and budgetary framework for the Council as well as adopting and changing the constitution, of which these regulations form part.
- 1.4 Council also has power to review decisions taken by Finance and Resources Committee or an Officer to ensure that they are not contrary to the budget or previous Council decision.
- 1.5 **Finance and Resources Committee**
- Finance and Resources Committee is responsible for proposing the policy framework and budget to Council, and for discharging its functions in accordance with the policy framework and budget.
- 1.6 **Audit and Scrutiny Committee**
- The responsibilities of the Audit and Scrutiny Committee include the scrutiny of the key underpinning principles of the medium term financial plan; to test that all budget and service pressures have been adequately considered and to review the working balance and reserve levels of the Council. The Audit and Scrutiny Committee therefore has a key role in ensuring that the Council is providing value for money, and managing its financial responsibilities well.
- 1.7 **Audit and Scrutiny Committee**
- The Audit and Scrutiny Committee reviews governance and internal control arrangements and will bring any matters requiring further review or action to Council, Finance and Resources Committee or Audit and Scrutiny Committee. The Audit and Scrutiny Committee is responsible for monitoring compliance with these financial regulations. The Audit and Scrutiny Committee has right of access to all information it considers necessary, approves and monitors the delivery of the internal audit activity of the [Council](#) and consults directly with internal and external auditors.
- 1.8 The Audit and Scrutiny Committee undertakes the Council's responsibilities under the Accounts and Audit Regulations 2011. This includes approving the statement of accounts. The committee ensures that the Councils' assurance statements, including the Annual Governance Statement, properly reflect the

risk environment and any actions required to improve it. The committee also monitors the effective development and operation of risk management within the Council.

1.9 **Head of Paid Service (Chief Executive)**

The Head of Paid Service (Chief Executive) is responsible for the corporate and overall strategic management of the Council. He or she must report to and provide information to Finance and Resources Committee, Council, and committees to enable them to fulfil their responsibilities. He or she is responsible for establishing a framework for management direction, style and standards and for monitoring the performance of the organisation. The Chief Executive is also responsible, together with the Monitoring Officer, for the system of record keeping in relation to all Council's decisions (see below).

1.10 **Monitoring Officer (Head of ~~Legal and~~ Support Services)**

The Monitoring Officer (Head of ~~Legal and~~ Support Services) is responsible for promoting and maintaining high standards of probity and the administration of the Council's political management structures. The Monitoring Officer is also responsible (Section 5, Local Government and Housing Act 1989) for reporting on any proposal, decision or omission which has or may give rise to contravention of law or maladministration to the Finance and Resources Committee, and for ensuring that procedures for recording and reporting key decisions are operating effectively.

1.11 The Monitoring Officer must ensure that committee decisions and the reasons for them are made public. He or she must also ensure that Members are aware of decisions made by officers under delegated responsibility.

1.12 The Monitoring Officer is responsible for advising all Members and officers about who has authority to take a particular decision.

1.13 The Monitoring Officer (together with the ~~Director of Strategy and Corporate Services~~ Section 151 Officer) is responsible for advising Finance and Resources Committee or Council about whether a decision is likely to be considered contrary or not wholly in accordance with the budget. Actions that may be 'contrary to the budget' include:

- (a) initiating a new policy
- (b) committing expenditure in the current or future years above the budget level

1.14 The Monitoring Officer is responsible for maintaining the Council's Constitution.

1.15 **Section 151 Officer (Director of Strategy and Corporate Services)**

The ~~Director of Strategy and Corporate Services~~ Section 151 Officer has statutory duties in relation to the financial administration and stewardship of

the Council. This statutory responsibility cannot be overridden. The statutory duties arise from:

- (a) Section 151 of the Local Government Act 1972
- (b) The Local Government Finance Act 1988
- (c) The Local Government and Housing Act 1989
- (d) The Local Government Act 2000
- (e) The Local Government Act 2003
- (f) The Accounts and Audit Regulations 2011

1.16 The ~~Director of Strategy and Corporate Services~~ Section 151 Officer is responsible for:

- (a) the proper administration of the Council's financial affairs;
- (b) setting and monitoring compliance with financial management standards;
- (c) establishing an adequate and effective system of Internal Audit;
- (d) advising on the corporate financial position and on the key financial controls;
- (e) necessary to secure sound financial management;
- (f) providing financial information;
- (g) preparing the revenue budget and capital programme;
- (h) treasury management;
- (i) approving accounting policies and ensuring that they are applied consistently;
- (j) approving the accounting procedures and records the Council;
- (k) ensuring that the annual statement of accounts is prepared in accordance with the CIPFA/LASAAC Code of Practice on Local Authority Accounting in the United Kingdom;
- (l) signing and dating the statement of accounts, stating that it presents fairly the financial position of the Council at the accounting date.

1.17 Section 114 of the Local Government Finance Act 1988 requires the ~~Director of Strategy and Corporate Services~~ Chief Finance Officer (Section 151 Officer) to report to Council or Finance and Resources Committee and the External Auditor if Council or one of its officers:

- (a) has made, or is about to make, a decision which involves incurring unlawful expenditure;

- 
- (b) has taken, or is about to take, an unlawful action which has resulted or would result in a loss or deficiency to the Council;
  - (c) is about to make an unlawful entry in the Council's accounts.

1.18 Section 114 of the 1988 Act also requires:

- (a) the ~~Director of Strategy and Corporate Services~~ [Chief Finance Officer \(Section 151 Officer\)](#) to nominate a properly qualified member of staff to deputise shall he or she be unable to perform the duties under section 114 personally;
- (b) the Council to provide the ~~Director of Strategy and Corporate Services~~ [Chief Finance Officer \(Section 151 Officer\)](#) with sufficient staff, accommodation and other resources – including legal advice where this is necessary – to carry out the duties under Section 114.

1.19 **Heads of Service**

Heads of Service are responsible for:

- (a) ensuring that the services under their control are managed to promote value for money and good standards of financial control and accountability;
- (b) ensuring that Members are advised of the financial implications of all proposals and that the financial implications have been agreed by the ~~Director of Strategy and Corporate Services~~ [Section 151 Officer](#);
- (c) entering into contracts on behalf of the council, in accordance with Procurement Regulations.

## FINANCIAL PLANNING

### Introduction

- 2.1 A strong planning process expresses the ambition of the Council in clear priorities over the medium term and promotes a wide understanding of these priorities. This is a vital basis for financial planning as it enables limited resources to be used in a way that best delivers the corporate priorities of the Council.
- 2.2 Council is responsible for agreeing the Council's policy framework and budget, which will be proposed by the Finance and Resources Committee. In terms of financial planning, the key elements are:
- (a) the corporate priorities;
  - (b) the medium term financial plan;
  - (c) the capital programme.
- 2.3 Council is also responsible for determining the circumstances in which a decision will be deemed to be contrary to the budget or policy framework. Decisions shall be referred to Council by the Monitoring Officer.
- 2.4 Finance and Resources Committee is responsible for taking in-year decisions on resources and priorities in order to deliver the policy framework within the financial limits set by the ~~council~~[Council](#).

### Budgeting

- 2.5 The budget is the financial expression of the Council's plans and policies. The Council is a complex organisation responsible for delivering a wide variety of services. It needs to plan effectively and to develop systems to enable scarce resources to be allocated in accordance with priorities.
- 2.6 The budget and Council Tax is approved by Council and proposed by Finance and Resources Committee on the advice of the ~~Director of Strategy and Corporate Services~~[Section 151 Officer](#). The draft budget shall include allocations to different service areas, services and to specific projects. The budget will assess the adequacy of contingencies and reserves.
- 2.7 The ~~Director of Strategy and Corporate Services~~[Section 151 Officer](#) is responsible for ensuring that a revenue budget and medium-term financial plan is prepared on an annual basis for consideration by Finance and Resources Committee, before submission to Council. Council may amend the budget or ask Finance and Resources Committee to reconsider it before approving it.
- 2.8 It is the responsibility of Heads of Service to ensure that draft budgets are prepared for submission to Finance and Resources Committee and that these budgets are in line with guidance issued by the ~~Director of Strategy and Corporate Services~~[Section 151 Officer](#).

- 2.9 Guidelines on budget preparation are issued to Heads of Service by the ~~Director of Strategy and Corporate Services~~ [Section 151 Officer](#) following agreement with Finance and Resources Committee.

#### Budget monitoring and control

- 2.10 The ~~Director of Strategy and Corporate Services~~ [Section 151 Officer](#) is responsible for ensuring appropriate financial information is available to enable budgets to be monitored effectively. The ~~Director of Strategy and Corporate Services~~ [Section 151 Officer](#) must review expenditure against budget allocations and report to Finance and Resources Committee.

Committee on the overall position.

- 2.11 It is the responsibility of Heads of Service to control income and expenditure within their area and to monitor budgets, taking account of financial information provided by the ~~Director of Strategy and Corporate Services~~ [Section 151 Officer](#). They shall report on variances within their own Service areas. They shall also take any action necessary to avoid exceeding their budget allocation and alert the ~~Director of Strategy and Corporate Services~~ [Section 151 Officer](#) to any problems in doing so.

#### Preparation of the capital programme

- 2.12 Capital expenditure involves acquiring or enhancing fixed assets with a long-term value to the Council, such as land, buildings and major items of plant, equipment or vehicles. Capital assets shape the way services are delivered in the long term and create financial commitments that will continue for many years' even decades.
- 2.13 Capital expenditure is a key part of the Council's investment strategy. It should therefore be linked to asset management plans and be carefully prioritised in order to maximise the benefit of scarce resources.
- 2.14 The ~~Director of Strategy and Corporate Services~~ [Section 151 Officer](#) is responsible for ensuring that a three year capital programme is prepared on an annual basis for consideration by Finance and Resources Committee before submission to the Council.
- 2.15 The ~~Director of Strategy and Corporate Services~~ [Section 151 Officer](#) must report to Finance and Resources Committee on named schemes or projects in the approved capital programme where the estimated or actual expenditure exceeds the provision by either 10% or £200,000.

#### Maintenance of reserves

- 2.16 The Council must decide the level of reserves it wishes to maintain before it can decide the level of Council Tax. Reserves are maintained as a matter of prudence. They enable the Council to provide for unexpected events and protect it from overspending, if such events occur. Earmarked reserves are also maintained for specific purposes such as the purchase or renewal of capital items.

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- 2.17 It is the responsibility of the ~~Director of Strategy and Corporate Services~~ Section 151 Officer to advise Finance and Resources Committee and Council on prudent levels of reserves for the Council.
- 2.18 Virement from reserves for unexpected expenditure must be approved in accordance with the guidelines set out below.

#### Budget Virements

- 2.19 The overall budget is proposed by Finance and Resources Committee and approved by Council. Heads of Service and Budget Managers are therefore authorised to incur expenditure in accordance with the estimates that make up the budget. The rules below cover virement; that is, switching resources between approved estimates.
- 2.20 A Head of Service may exercise virement on budgets under his or her control during the year, however where a virement of any value reflects a change in policy then it is expected that Heads of Service will consult the appropriate Finance and Resources Committee member/s.
- 2.21 For virements required from the Council's Reserves; these require the approval of Finance and Resources Committee (up to £200,000) or Council (for amounts over £200,000).

#### Treatment of Year-End Balances

- 2.22 At the end of each year there will be variations between the budget and the actual spend for the services under each Head of Service's control. The ability to carry-forward unspent budget promotes sound financial management and value for money within the Council.
- 2.23 The ~~Director of Strategy and Corporate Services~~ Section 151 Officer will have responsibility to ensure appropriate accounting procedures are in operation to ensure carried forward totals are correct, and to report all key variations in spend and income to Performance and Resources Committee.



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## RISK MANAGEMENT AND CONTROL OF RESOURCES

### Introduction

- 3.1 All organisations, whether private or public sector, face risks to people, property and continued operations. Risk is the chance or possibility of loss, damage, injury or failure to achieve objectives caused by an unwanted or uncertain action or event. Risk management is the planned and systematic approach to the identification, evaluation and control of risk. Its objectives are to secure the assets of the organisation and to ensure the continued financial and organisational well-being of the organisation.
- 3.2 It is essential that robust, integrated systems are developed and maintained for identifying and evaluating all significant operational risks to the Council. This shall include the proactive participation of all those associated with planning and delivering services.

### Risk management

- 3.3 Audit and Scrutiny Committee is responsible for reviewing the Council's Insurance and Risk Management Strategy and for reviewing the effectiveness of risk management.
- 3.4 The ~~Director of Strategy and Corporate Services~~ [Section 151 Officer](#) is responsible for preparing the Council's Insurance and Risk Management Strategy and for promoting it throughout the Council.

### Insurance

- 3.5 However well risk is managed by the Council it is not possible to eliminate the possibility of an event that leads to significant financial loss. Insurance arrangements are designed to ensure that if such an event occurs, insurance cover exists so the loss will not impact on the ability of the Council to deliver services.
- 3.6 The ~~Director of Strategy and Corporate Services~~ [Section 151 Officer](#) is responsible for ensuring that effective arrangements for insurance are in place.
- 3.7 Heads of Service are required to notify the ~~Director of Strategy and Corporate Services~~ [Section 151 Officer](#) of all new risks, including equipment, properties and vehicles that require insurance and of any alterations affecting existing insurance

### Internal control

- 3.8 Internal control refers to the systems of control devised by management to help ensure the Council's objectives are achieved in a manner that promotes economical, efficient and effective use of resources and that the Council's assets and interests are safeguarded.
- 3.9 The Head of Internal Audit is responsible for advising on effective systems of internal control. These arrangements need to ensure compliance with all applicable statutes and regulations, and other relevant statements of best

practice. They shall ensure that public funds are properly safeguarded and used economically, efficiently, and in accordance with statutory and other approvals that govern their use.

- 3.10 It is the responsibility of Heads of Service to establish sound arrangements for planning, appraising, authorising and controlling their operations in order to achieve continuous improvement, value for money and for achieving their financial and other performance targets.

#### Audit requirements

- 3.11 The Accounts and Audit (England) Regulations 2011 issued by the Secretary of State require the Council to maintain an adequate and effective system of Internal Audit for its accounting records and its system of internal control.
- 3.12 The Council must also appoint External Auditors. The basic duties of the External Auditor are governed by the Local Government Act 1999. The Code of Audit Practice (2010) sets out the auditor's objectives to review and report on:
- (a) the audited body's financial statements and its annual governance statement
  - (b) whether the audited body has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources.
- 3.13 The Council may, from time to time, be subject to audit, inspection or investigation by external bodies such as HM Revenue and Customs who have statutory rights of access.

#### Preventing fraud and corruption

- 3.14 The Council will not tolerate fraud and corruption in the administration of its responsibilities. The Council's expectation of propriety and accountability is that Members and staff at all levels will lead by example in ensuring adherence to legal requirements, rules, procedures and practices.
- 3.15 The ~~Director of Strategy and Corporate Services~~ Section 151 Officer is responsible for the development and maintenance of an anti-fraud and anti-corruption policy.
- 3.16 Heads of Service are responsible for ensuring that this policy is implemented within their Service areas.
- 3.17 The Council also expects that individuals and organisations (eg suppliers, contractors, partners and service providers) with whom it comes into contact will act towards the Council with integrity and without thought or actions involving fraud and corruption.

#### Assets

- 3.18 The Council holds assets in the form of property, vehicles, equipment, furniture and other items worth many millions of pounds. It also holds intangible assets such as software licences. It is important that assets are safeguarded and used efficiently in

service delivery, and that there are arrangements for the security of both assets and information required for service operations.

- 3.19 Heads of Service shall ensure that records and assets are properly maintained and securely held. They shall also ensure that contingency plans for the security of assets and continuity of service in the event of disaster or system failure are in place.
- 3.20 An asset register is maintained for the Council, assets are recorded when they are acquired by the Council and this record is updated as changes occur.
- 3.21 Resources no longer required are disposed of in accordance with the law and the Asset Management Plan so as to maximise benefits.

#### **Treasury management**

- 3.22 The Council's borrowing and investments comply with CIPFA's Code of Practice for Treasury Management in Local Authorities.
- 3.23 All money controlled by the Council is managed by the ~~Director of Strategy and Corporate Services~~ Section 151 Officer.
- 3.24 The ~~Director of Strategy and Corporate Services~~ Section 151 Officer is responsible for reporting to Finance and Resources Committee a proposed Treasury Management Strategy for the coming financial year at or before the start of each financial year.
- 3.25 All Finance and Resources Committee decisions on borrowing, investment or financing shall be delegated to the ~~Director of Strategy and Corporate Services~~ Section 151 Officer, who is required to act in accordance with CIPFA's Code of Practice for Treasury Management in Local Authorities.
- 3.26 The Director of Strategy and Corporate Services is responsible for reporting to Finance and Resources Committee not less than twice in each financial year on the activities of the treasury management operation and on the exercise of his or her delegated treasury management powers.

#### **Staffing**

- 3.27 The Chief Executive is responsible for providing overall management to staff and determining appropriate officer staffing structures. He or she is also responsible for ensuring that there is proper use of the evaluation or other agreed systems for determining the remuneration of a job.
- 3.28 Heads of Service are responsible for managing staffing levels to ensure:
- (a) that employee costs remain within the agreed budget;
  - (b) the proper use of human resources policies and procedures.

#### **Payments to employees and Members**

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- 3.29 The ~~Director of Strategy and Corporate Services~~ [Section 151 Officer](#) is responsible for ensuring arrangements are in place to ensure proper payment to staff and Members and that a framework of policies is in place to provide for the reward, care and management of staff.

## **SYSTEMS AND PROCEDURES**

### Introduction

- 4.1 The Council has many systems and procedures relating to the management of the Council's finances and assets. The information must be accurate and the systems and procedures sound and well administered. They shall contain controls to ensure that transactions are properly processed and errors detected promptly. Sound systems and procedures are essential to an effective framework of accountability and control.

### **General**

- 4.2 The ~~Director of Strategy and Corporate Services~~ [Section 151 Officer](#) is responsible for the operation of the Council's accounting systems, the form of accounts and the supporting financial records. However, Heads of Service are responsible for the proper operation of financial processes in their own departments.
- 4.3 Any changes to financial procedures or systems by Heads of Service to meet their own specific service needs shall be agreed in advance with the ~~Director of Strategy and Corporate Services~~ [Section 151 Officer](#).
- 4.4 Heads of Service shall ensure that their staff receive relevant financial training that has been approved by the ~~Director of Strategy and Corporate Services~~ [Section 151 Officer](#).
- 4.5 The ICT Manager must ensure that where appropriate computer and other systems are registered in accordance with data protection legislation.
- 4.6 Heads of Service must ensure that staff are aware of their responsibilities under freedom of information legislation.

### **Income and expenditure**

- 4.7 It is the responsibility of Heads of Service to ensure that a proper scheme of delegation has been established within their area and is operating effectively. The scheme of delegation shall identify staff authorised to act on the ~~Director's~~ [Section 151 Officer's](#) behalf, in respect of payments, income collection and placing orders, together with the limits of their authority.
- 4.8 Effective income collection systems are necessary to ensure that all income due is identified, collected, receipted and banked properly. The Council relies on income it collects to fund the services it provides. Loss of potential income or inability to predict income levels will impact on these vital services.
- 4.9 Finance and Resources Committee is responsible for approving procedures for writing off debts over the value of £5,000 as part of the overall control framework.

- 4.10 Every Officer and Member of the Council engaged in contractual, commercial or purchasing decisions on behalf of the authority must declare any links or personal interests that they may have with tenderers, suppliers and/or contractors.
- 4.11 Heads of Service must comply with the Procurement Strategy and Contract Standing Orders with regards to the ordering of goods and services.

#### **Taxation**

- | 4.12 The ~~Director of Strategy and Corporate Services~~ Section 151 Officer is responsible for advising Heads of Service, in the light of guidance issued by appropriate bodies and relevant legislation as it applies, on all taxation issues that affect the Council.
- | 4.13 The ~~Director of Strategy and Corporate Services~~ Section 151 Officer is responsible for approving the Council's tax records, making all tax payments, receiving tax credits and submitting tax returns by their due date as appropriate.

#### **EXTERNAL ARRANGEMENTS**

##### Introduction

- 5.1 The Council provides a distinctive leadership role for the community and brings together the contributions of the various stakeholders. It must also act to achieve the promotion or improvement of the economic, social or environmental well-being of the Borough.

##### Partnerships

- 5.2 Finance and Resources Committee is responsible for approving delegations, including frameworks for partnerships. Finance and Resources Committee is the focus for forming partnerships with other local public, private, voluntary and community sector organisations to address local needs.
- 5.3 The Chief Executive or his or her nominee represents the Council on partnership and external bodies, in accordance with the scheme of delegation.
- | 5.4 The ~~Director of Strategy and Corporate Services~~ Section 151 Officer must ensure that the accounting arrangements to be adopted relating to partnerships and joint ventures comply with proper practice.
- 5.5 Heads of Service are responsible for ensuring that appropriate approvals are obtained before any negotiations are concluded in relation to work with external bodies.

##### External funding

- | 5.6 The ~~Director of Strategy and Corporate Services~~ Section 151 Officer is responsible for issuing guidance to ensure that sound financial arrangements are put in place in each circumstance where funding of

services is shared or met by external bodies. These arrangements should include proper processes to ensure that all income is recovered and properly recorded in the Council's accounts.

- 5.7 Heads of Service are responsible for ensuring that all external funding arrangements provide value for money and contribute to the published strategies and plans of the Council.

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## **PART 4.6 - STANDING ORDERS RELATING TO CONTRACTS**

### **Contents**

1. Introduction
2. Scope
3. Responsibility of Staff, Heads of Service and Directors
4. Procurement Guidance
5. Procurement Principles
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32. Asset Disposals (Other Than Land or Property)

Definitions Index

Appendix 1: Record of Waivers from Contract Procedures

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## CONTRACT STANDING ORDERS

### 1. Introduction

- 1.1 Brentwood Borough Council is committed to developing its Procurement Strategy and to raising organisational awareness of its importance.
- 1.2 Procurement decisions are among the most important decisions the Council will make because the money involved is public money, and the Council is concerned to ensure that high quality goods, works and services are provided. Efficient use of resources in order to achieve best value is therefore imperative. The Council's reputation is equally important and should be safeguarded from any imputation of dishonesty or corruption.
- 1.3 For these reasons, it is a disciplinary offence to fail to comply with Contract Standing Orders. Employees have a duty to report breaches to an appropriate senior manager.
- 1.4 The Contract Standing Orders lay down the minimum requirements. A more detailed procedure may be appropriate for a particular contract. If there is any doubt as to how to undertake any procurement then the officer must contact the Procurement Officer to seek guidance.
- 1.5 A contract includes the following:
- any contract for goods, works or services, including disposals;
  - any order for goods, works or services;
  - a grant given or received by the Council;
  - a contract managed by consultants;
  - a contract appointing consultants;
  - any partnership arrangement;
  - contracts relating to the disposal or purchase of land and buildings;
  - any lease agreements for property and goods.
- 1.6 Both purchasing and disposal procedures must:
- achieve best value for public money spent;
  - be consistent with the highest standards of integrity;
  - ensure fairness in allocating public contracts;
  - comply with legal requirements;
  - ensure that non-commercial considerations do not influence any contracting decision;
  - support the Council's corporate and service aims and policies;
  - comply with the Council's Procurement Strategy;
  - comply with Financial Regulations, Health and Safety, Environmental and Equal Opportunities (Diversity) requirements;
  - be able to demonstrate that the Council's interests have not been prejudiced or exposed to undue or unmanaged risks.

### 2. Scope

- 2.1 These Standing Orders are made under the provisions of section 135 of the Local Government Act 1972 and govern the making of contracts for and on behalf of the Council.



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- 2.2 These Standing Orders apply to:-
- 2.2.1 all contracts made and to all orders placed by, for or on behalf of the Council for the procurement, hire and commissioning of goods, services and works including where the Council is acting on behalf of other public bodies;
  - 2.2.2 all staff of the Council;
  - 2.2.3 any person or organisation engaged to manage a contract or undertake work that involves procurement on behalf of the Council. In each case the requirement to comply with the Regulations is to be included in the terms of engagement;
  - 2.2.4 the selection of sub-contractors where these are nominated by the Council under a main contract.
- 2.3 Minor amendment to these Contract Standing Orders may be made by the Section 151 Officer. Any substantial or material amendment shall on the advice of the Monitoring Officer be referred to Full Council.

3. **Responsibility of Staff, Heads of Service and Directors**

Within this framework:-

3.1 **Staff**

- 3.1.1 Every officer dealing with contracts must have authority from their Line Manager to do so. This can be in their job description or in written delegated authority from their Head of Service or the Chief Executive or the Section 151 Officer through the financial scheme of management delegation. An Authorised Signatory List will be kept and maintained by the Procurement Officer.
- 3.1.2 Staff responsible for purchasing and disposal must comply with Contract Standing Orders, all relevant procedures contained in the Council's Financial Regulations and the Council's Code of Conduct together with all UK and European legal requirements. Where there is conflict between these Standing Orders and any binding rule of law, the law must prevail.
- 3.1.3 Only staff with authorised approval can sign contracts in accordance with their authorisation limits.
- 3.1.4 Staff **MUST** comply with the guidance in the Contract Standing Orders.
- 3.1.5 Staff **MUST** use any relevant Corporate Contract already in place.
- 3.1.6 Staff must keep records to show a clearly documented audit trail. It will be the Authorised Officer's role to provide the contract details and the Procurement Officer's role to ensure that those details are recorded on the Contracts Register. A copy of all contracts to be kept by the Authorised Officer or Head of Service.

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- 3.1.7 Each procurement exercise which results in a contract will be managed throughout the procurement process and during the life of the contract by an appropriately skilled officer appointed by the relevant Head of Service. All such contracts will be actively managed against clear outcomes and objectives. Failure by any contractor to meet such outcomes and objectives shall be immediately brought to the attention of the appropriate Head of Service, who shall take whatever action he deems necessary to ensure that so far as possible performance targets are achieved.
- 3.1.8 All staff involved in procurement shall ensure that records of actions and decisions at all stages of the procurement process will be maintained and made available for inspection when required by Internal and External Audit. Rectification action will be taken within the terms of the contract where performance targets are not being met.
- 3.1.9 Staff must ensure that agents and consultants acting on their behalf comply with the requirements referred to in Contract Standing Orders 3.1.2 above. Such consultants must not make any decision as to whether to award a contract or who a contract should be awarded to.

3.2 **Heads of Service must:**

- 3.2.1 Ensure they have the delegated powers for the contract and that the project has the appropriate policy approval.
- 3.2.2 Ensure that there is full budgetary provision (including any maintenance and other charges) for the contract and that the sources of funding are fully detailed and agreed before starting the contract process.
- 3.2.3 Ensure that no tender is accepted where it exceeds the approved budget/cash limit by more than **10%** unless prior written approval is obtained from the Council's Section 151 officer.
- 3.2.4 Ensure that expenditure is fully contained within the approved budget/cash limit and secured.
- 3.2.5 Ensure that they have issued appropriate staff with written delegation of the role that they may take in the contracting process on behalf of the Council.
- 3.2.6 Ensure that their staff comply with the Contract Standing Orders.

4. **Procurement Guidance**

- 4.1 Procurement guidance shall be in electronic form on the Council's Intranet. The guidance will contain all Council documents which are relevant to and assist with the procurement process.
- 4.2 The Section 151 Officer will review the guidance as required. No alteration will be made to the guidance unless agreed by the Section 151 Officer.

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## 5. **Procurement Principles**

The Council will:-

- 5.1 Base the procurement of its requirements on the principles of best value to ensure that it achieves efficiency, effectiveness and value for money.
- 5.2 [Consider how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area and how, in conducting the process of procurement, it might act with a view to securing that improvement.](#)
- 5.23 Take a long term strategic view of how it procures its requirements including the potential for alternative methods of service delivery, innovative funding methods and partnership working.
- 5.34 Expect that externally sourced requirements will be procured as a result of a competitive process unless there are compelling or practical reasons to the contrary.
- 5.45 Ensure that sustainability is an important criterion in any procurement activity along with Equality & Diversity objectives.
- 5.56 Where appropriate develop procurement on a partnering basis in which both the Council and the supplier seek to achieve continuous improvement, and maximise mutual benefit through longer term clearly worded contracts. These contracts will be based on measurable outcomes and performance that define the obligations of both parties.
- 5.67 Where appropriate seek to work with others, and through legitimate consortia in the procurement of its requirements in order to widen the scope of its experience and focus expertise, maximise purchasing power and harness economies of scale.
- 5.78 Respect and value good employment practice and comply with all obligations imposed upon the Council, by relevant employment legislation and seek to ensure its provider markets meet the same standards.

## 6. **Code of Ethics**

- 6.1 All Employees of Brentwood Borough Council are required to uphold this code, and to seek commitment to it by all those with whom they engage in their professional practice. Council staff are expected to adopt an ethical purchasing policy based on the principles of this code and to raise any matter of concern relating to business ethics at an appropriate level.
- 6.2 All Employees are already required to comply with the Staff Code of Conduct which contains provisions in respect of relationships with contractors and other related matters.
- 6.3 Appropriate action will be taken against anyone who is found to have breached this code or the Staff Code of Conduct. Advice on any aspect of the code is available from the Procurement Officer.
- 6.4 All employees of Brentwood Borough Council are expected to:
  - maintain the highest standard of integrity in all business relationships;

- reject any business practice which might reasonably be deemed improper;
- never use their authority or position for personal gain;
- enhance the proficiency and stature of the Council by acquiring and applying knowledge in the most appropriate way;
- foster the highest standards of professional competence amongst those for whom they are responsible;
- optimise the use of resources for which they have influence over for the benefit of the Council;
- comply with both the letter and the intent of agreed contractual obligations;
- declare any personal interest that might affect, or be seen by others to affect, impartiality or decision making;
- ensure that the all information given out in the course of their work is accurate;
- respect the confidentiality of information received and never use it for personal gain;
- strive for genuine, fair and transparent competition;
- not accept inducements or gifts, other than items of small value such as business diaries or calendars;
- always to declare the offer or acceptance of hospitality and never allow hospitality to influence a business decision;
- remain impartial in all business dealing and not be influenced by those with vested interests.

## 7. **Aggregation and Disaggregation**

- 7.1 Where the Council requires a single set of goods, works or services to be provided the total contract value is made up of the total value of the smaller sums. This is known as aggregation.
- 7.2 A contract value shall not be divided up into its constituent smaller parts so as to deliberately avoid placing a contract for the full value with one contractor or avoid the requirements set out in the EU Procurement Regulations. It is an offence under the EU Procurement Regulations to disaggregate the value of a contract so as to deliberately avoid the EU Procurement Regulations.

## 8. **Requirements to Ensure Competition**

- 8.1 Collaborative frameworks and partnership options must be considered in principle as part of the procurement process regardless of the estimated value of the contract.

### 8.2 **Thresholds**

#### 8.2.1 **Estimated contract value up to £10,000**

No specific written quotation is required. The aim of the officer responsible for the contract shall be to obtain the best value for money for the Council. Any Authorised Officer can approve a contract.

#### 8.2.2 **Estimated contract value between £10,000 and £50,000**

Three written quotations are required and the contract opportunity must be provided to the Procurement Officer so that it can be advertised on the Council's website. Collaborative framework agreements must also be considered. The aim of the officer responsible for the contract shall be to obtain the best value for money for the

Council. The Head of Service must sign/approve the contract and the relevant Chair should be advised of any quotes over £25,000 prior to the contract being awarded

**Estimated contract value over £50,000 and under current OJEU threshold**

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- 8.2.3 Estimated contract value between £50,000 and the current OJEU threshold of ~~£173,934.00~~£172.514 for goods and services, and ~~£4,348,350.00~~4,322,012 for works (due to be revised January 2014/2016)

As per 8.2.2 above but a formal tendering process utilising the e-procurement portal must be undertaken. The Chief Executive or Section 151 Officer must sign/approve the contract.

In either case the Officer must use the Council's conditions of contract or appropriate professional institute conditions of contract or conditions of contract which have been approved by the Monitoring Officer.

**8.2.4 Estimated contract value over OJEU Threshold**

Contracts must be advertised according to EU procurement regulations. The officer responsible for the contract **must**, before starting the contract process, obtain advice from the Procurement Officer.

Where it can be demonstrated that there are insufficient suitably qualified contractors to meet the competition requirement set out above all suitably qualified contractors should be invited so far as is practical.

**9. Competitive Tendering Process**

- 9.1 Where the total value of the contract is more than **£10,000**, staff must ensure there is sufficient competition and that the contract is appropriately advertised. Any tender or quotation process must ensure that potential candidates provide sufficient detail to enable staff to determine whether they:

- 9.1.1 Are financially stable.
- 9.1.2 Have appropriate technical ability to undertake the sort of contract they wish to be considered for.
- 9.1.3 Are able to check their health and safety, environmental, equality and diversity and other records.

- 9.2 Where the total value of the contract is more than **£10,000** and there is no corporate contract, staff must invite either quotations or tenders by public advertisement. Public advertisement **must** include advertising the contract on the Council's website.

- 9.3 A period of no less than two weeks must be allowed for potential tenderers to receive and submit their completed quotation or tender for any Council contract. Where EU Procurement regulations are applicable relevant time limits will apply.

**10. Partnerships**

- 10.1 Staff considering a partnership arrangement must, before starting any contract process, obtain advice from the Monitoring Officer and the Procurement Officer. The

Monitoring Officer will advise on the partnership options available to ensure a workable solution including appropriate governance arrangements.

## 11. **Waiver of Contract Procedures**

- 11.1 A waiver under this Section allows a contract to be placed by direct negotiation with one or more suppliers rather than in accordance with Section 8. No waiver can be used if the EU Procurement Rules apply ie the estimated value of the contract exceeds the thresholds prevalent at the time.
- 11.2 All waivers must be signed by the Officer and countersigned by the Chief Executive, the Section 151 Officer or the Monitoring Officer. Only one signature is required.
- 11.3 **Waivers will be granted in the following circumstances only:**
- 11.3.1 The subject matter of the contract can only be supplied by one specialist contractor.
- 11.3.2 There is an unforeseen emergency involving immediate risk to persons, property or serious disruption to Council services.
- 11.3.3 The contract is an extension to an existing contract and a change of supplier would cause technical difficulties, diseconomies of scale or significant disruption to Council services.
- 11.4 **In addition to the signature of the Chief Executive, Section 151 Officer or the Monitoring Officer**
- 11.4.1 The Procurement Officer must be consulted where the purchase is to be made using collaborative procurement arrangements i.e. with another local council, government department, statutory undertaking or public service purchasing consortium.
- 11.4.3 The Procurement Officer must be consulted prior to commencing any procurement process using any [Government Procurement](#) [Crown Commercial](#) Service framework agreement, or, any other local or national framework agreements to ensure best fit for the Council's requirements.

## 12. **Requirements for All Contracts**

- 12.1 All contracts must be in writing.

For all contracts with a value of over **£50,000**, contract managers must:

- maintain a risk register during the contract period;
- undertake appropriate risk assessments;
- for identified risks, ensure contingency measures are in place;
- ensure critical support and maintenance arrangements are documented in the specification in order to avoid costly post-tender negotiation.

- 12.2 Members of the Council may have involvement in commercial transactions and their involvement in such matter is covered by the Council's Protocol on Member Involvement in Commercial Transactions.
- 12.3 Business continuity is critical to the successful delivery of council services. The officer must ensure that appropriate business continuity arrangements are in place and fully tested to enable services to be delivered in the event of any unforeseen incident occurring.

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12.4 Every contract must comply with Financial Regulations and any corporate procurement guidance, including EU Procurement Regulations, where appropriate.

13. **Framework agreements**

13.1 The term of any framework agreements may be for any period but in the majority of cases they must not exceed 4 years (EU Procurement Rules requirement). There are certain exceptions to this rule and advice should be sought from the Procurement Officer before proceeding down this route.

14. **Award criteria**

14.1 Staff must ensure that award criteria selected are appropriate to the contract and that these are signed off by the appropriate officer.

14.2 Staff must design award criteria to ensure best value for money for the Council. Particular emphasis must be placed on cost, quality and timeliness of the service or goods.

14.3 When evaluating tender submissions the minimum weighting to be used for cost must be 40%. There will be exceptions to this eg where the terms of a framework agreement state a different weighting. In any event approval must be sought from the Section 151 Officer to use a weighting below 40% for cost.

14.3 The pre-agreed award criteria for assessing the bid must not be changed after tender proposals have been opened.

15. **Invitations to Tender/Quotations**

15.1 The relevant officer must ensure that Invitations to Tender (ITT) and Invitations to Quote (ITQ) include a specification. The specification must describe clearly the Council's requirements in sufficient detail to ensure the submission of competitive bids may easily be compared.

15.2 The Invitation to Tender/Quote must state that the Council is not bound to accept any quotation or tender.

15.3 All candidates invited to tender or quote must be issued with the same information at the same time and subject to the same terms. Any additional information or amendments to the specification must be provided to all candidates on the same basis.

15.4 Staff who undertakes procurement of goods and/or services and works with a total value of less than **£50,000** must ensure that they follow the procedures laid out in Section 8.

15.5 In cases where it can be demonstrated that there are insufficient suitably qualified candidates to meet the competition requirements set out in Section 8 (above) all candidates must be invited to bid.

15.6 The Invitation to Tender/Quote must specify the award criteria, any weighting to be used and the procedure to be adopted.

15.7 All Invitations to Tender/Quote must be advertised on the Council's website.



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**16. Submission, Receipt and Opening of Tenders/Quotations**

- 16.1 Candidates invited to bid must be given adequate time in which to submit a quotation or tender. At least two weeks must be allowed for submission of tenders. Note that the EU Procurement Regulations set out specific time periods.
- 16.2 All tenders submitted to the Council, should be undertaken using the e-tendering system, or, in a sealed, plain envelope marked 'TENDER'. There must be no indication on the outside of the envelope of who the sender is. The envelope should be clearly addressed to the Procurement Officer and should indicate the subject of the contract. The e-tendering system is the preferred option and approval to use the envelope system should be sought from the Section 151 Officer.
- 16.3 The Procurement Officer shall be responsible for the safekeeping of tenders until opening. Receipt of each tender must be initialled and dated by the appropriate receiving officer. This must include the Procurement Officer and at least one Council Member or appropriate individual as approved by the Section 151 Officer.
- 16.4 A record must be made at the time of opening the tenders showing the name and address of the tenderers, the date and time of opening and the amount tendered (where possible). All those present at the tender opening shall sign the record as evidence that it is correct.
- 16.5 In the event of a marked or late tender then the Procurement Officer must be advised and a decision made by the Monitoring Officer on whether the tender can be accepted.

**17. Clarification Procedures**

- 17.1 After the tender opening it may become apparent that one or more of the potential contractors who have submitted bids have misinterpreted the specification. If it is clear that this is a result of an error or ambiguity in the specification the responsible officer must consult the Procurement Officer as to whether all the contractors should be provided with revised specifications and given the opportunity to revise their tender.

**18. Tender Evaluation**

- 18.1 Confidentiality of tenders/quotations and the identity of tenderers must be maintained at all times. Information about one tenderer's response must not be given to another tenderer.
- 18.2 This includes the situation where one department of the Council is tendering for a contract with another department of the Council. In such a situation, there must be a clear division between the two parties, with no advantage ensuing for the internal candidate.
- 18.3 Staff must evaluate and award the contract in accordance with the agreed award criteria in the Invitation to Tender/Quote. The officer responsible for evaluating the tenders should complete a tender evaluation sheet recording the details of the tenders and the process for selecting the preferred contractor. There is also a form that requests the Monitoring Officer to seal the contract.

18.4 The reasons for the selection of the successful candidate should be recorded on the evaluation report. The officer carrying out the evaluation must sign the report. Authorisation to award the contract must be given in writing by an officer who has written delegated authority to do so.

## 19. **Contract Documents**

19.1 Every contract must be recorded in writing, and must state clearly:

19.1.1 What is to be supplied.

19.1.2 Payment provisions (amount and when).

19.2 All contracts with a value over £50,000 must adhere to the Council's standard terms and conditions where possible. Approval of any other alternative terms and conditions should be sought from the Section 151 Officer.

## 20. **Race, Disability and Gender Public Sector Equality Duty**

20.1 Staff must note that the ~~Race, Disability and Gender~~ Public Sector Equality duties Duty require all ~~statutory public~~ agencies to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010, advance and promote equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. Section 4 of the Equality Act 2010 lists the nine protected characteristics as being: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Through a variety of specific duties, the Council is required to ensure services are targeted on the most vulnerable sections of the community and that inclusion/participation rates amongst these groups are increased. ~~Recent access to services legislation makes discrimination on the grounds of religion and belief or sexual orientation illegal.~~

20.2 Legislation such as the ~~Disability Discrimination Act and Race Relations (Amendment)~~ Equality Act 2010 etc, make it clear that when the Council contracts, it still retains responsibility for ensuring that services are provided in an appropriate and non discriminatory way. This requires consideration of equality to be built into all the Council's procurement and contract management processes.

20.3 Any partner organisations, consultants or organisations acting on behalf of the Council will be required to ensure that all policies relating to Race, Disability and Gender Equality are fully complied with. Checks may be made to ensure that these organisations are aware of and addressing equality and diversity legislation.

## 21. **Bonds and Parent Company Guarantees**

21.1 A bond is an insurance policy. If the contractor does not do what is agreed under a contract with the Council, the Council can claim from the insurer the sum of money specified in the bond (often 10% of the contract value). A bond is intended to protect the Council against a level of cost arising from a contractor's failure. The officer must consult the Section 151 Officer as to whether a bond is appropriate. Generally a bond will be required:

- Where the total value exceeds **£500,000**;
- Where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract.

21.2 A parent company guarantee is a contract which binds the parent of a subsidiary company as follows: If the subsidiary company fails to do what it has promised under a contract with the Council, they can require the parent company to do so instead. The Section 151 Officer must be consulted when:

- a candidate is a subsidiary of a parent company, the officer does not think a parent company guarantee is necessary and any of the following conditions are satisfied;
- the total value exceeds **£50,000**;
- award is based on the evaluation of the parent company;
- there is some concern about the financial stability of the candidate.

## 22. **Award of Contract**

22.1 All candidates must be notified in writing, simultaneously and as soon as possible, as to the outcome of the tender exercise.

22.2 Where a full EU Procurement Regulations' compliant tender exercise has been carried out, a statutory minimum standstill period of 10 days must apply between the electronic notification to the tenderers of the award decision and the successful candidate signing the contract. 15 days must apply if notification is given by post.

22.3 The contract can only be signed by an officer who has the authority to do so.

## 23. **Sealing a Contract**

23.1 Where a contract has a bond or guarantee or is over the OJEU threshold, it shall be sent to the Monitoring Officer with a completed Sealing Form and shall be sealed on behalf of the Council.

## 24. **Prevention and Detection of Corruption**

24.1 All staff must comply with the Council's Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the officer to prove that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under EU Procurement Regulations.

24.2 The following clause must be put in every written council contract:

*"The Council may terminate this contract and recover all losses if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following:*

*Offer, give or agree to give to anyone any inducement or reward in respect of this or any other council contract (even if the contractor does not know what has been done);*

commit an offence under the ~~Prevention of Corruption Acts 1889 to 1916~~ [Bribery Act 2010](#) or Section 117(2) of the Local Government Act 1972;  
commit any fraud in connection with this or any other council contract whether alone or in conjunction with council members, contractors or employees;

violate the Council's Anti-Fraud Strategy;  
violate the Council's Anti-Bribery Policy.

Any clause limiting the Contractor's liability shall not apply to this clause.

- 24.3 All staff and suppliers are expected to adhere to the Council's Anti-Fraud Strategy. The Council has a zero tolerance policy on fraud and has a confidential reporting mechanism (known as whistle blowing) for genuine reporting of malpractice.

## 25. **Managing Contracts**

- 25.1 The Head of Service is responsible for naming contract managers for all new contracts. All contracts must have a named contract manager for the entirety of the contract.

## 26. **Contracts Register**

- 26.1 The Council is required to maintain a Contracts Register. It is the responsibility of the relevant officer to provide all contract details to the Procurement Officer. It is the Procurement Officer's responsibility to ensure that all contracts are included on the Council's Contract Register.

## 27. **Business case, risk assessment and business continuity planning**

- 27.1 An appropriate business case must be prepared for all procurements over **£10,000**. Provision for resources for the management of the contract, for its entirety, must be identified in the business case.

- 27.2 For all contracts with a value of over **£50,000**, contract managers must:

- maintain a risk register during the contract period;
- undertake appropriate risk assessments;
- for identified risks, ensure contingency measures are in place;
- ensure critical support and maintenance arrangements are documented in the specification in order to avoid costly post-tender negotiation.;
- ensure that the relevant Chair of the regulating committee for their service or in its absence the Finance and Resources Committee is aware of the existence of such contracts and regularly inform them on such matters.

- 27.3 Members of the Council may have involvement in commercial transactions and their involvement in such matter is covered by the Council's Protocol on Member Involvement in Commercial Transactions.

- 27.4 Business continuity is critical to the successful delivery of council services. The officer must ensure that appropriate business continuity arrangements are in place and fully tested to enable services to be delivered in the event of any unforeseen incident occurring. The requirement for a Business Continuity Plan must be an integral element of the Council's specification.

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**28. Post Contract Monitoring, Evaluation and Review**

- 28.1 All contracts which have a value higher than the EU Procurement Rules' threshold limits, or, which are high-risk, are to be subject to regular formal review with the contractor.
- 28.2 During the life of the contract the officer must monitor in respect of:
- performance;
  - compliance with specification and contract;
  - cost;
  - any value for money requirements;
  - user satisfaction and risk management.

**29. Termination of Contract**

- 29.1 An officer shall not terminate a contract with a value over **£10,000** prior to its expiry date without first obtaining advice from the Monitoring Officer.
- 29.2 Where there is an intention to terminate a contract early, the Officer shall report the reasons for this termination to the Monitoring Officer at the earliest opportunity.
- 29.3 Staff must seek advice from the Monitoring Officer if payments to a contractor are to be withheld or there is any other problem with the contract which may result in possible early termination.

**30. Appointment of Consultants to Provide Services**

- 30.1 The Council uses the expertise of specialist consultants to undertake a range of procurement exercises on behalf of the Council. Staff must ensure that such consultants are fully briefed as to Contract Standing Orders:
- 30.1.1 Consultants, whether technical or professional, must be selected, and any commissions awarded, in accordance with the Contract Standing Orders.
- 30.1.2 The engagement of a consultant shall follow the agreement of a 'brief' that describes the scope of the services to be provided and shall be subject to completion of a formal contract.
- 30.1.3 Consultants shall be required to provide evidence of, and maintain professional indemnity insurance policies to the satisfaction of the relevant director for the duration of the contract.

**31. Technical Amendments**

- 31.1 The Section 151 Officer has the delegated authority to make technical amendments, when necessary, to ensure that these Contract Standing Orders remain up to date and consistent with legislation, the Council's organisation, structure and generally with best practice. These amendments shall be subject to consultation with the Monitoring Officer and Procurement Officer.
- 31.2 Financial thresholds as set out in Section 8 may only be altered or amended following consultation and agreement of the Finance and Resources Committee and

the Section 151 Officer.

32. **Asset Disposals (Other than Land or Property)**

- 32.1 A check should be made to determine whether there is a corporate policy or contract for the disposal of the stock (e.g. IT equipment should be disposed of through the ICT team). If a policy or contract is in place, this must be used.
- 32.2 Office equipment and furniture should first be advertised on the "Office Equipment" section of the Intranet, and communicated to schools and other establishments of the Council. Where this method of disposal is unsuccessful, the goods may be sold according to the paragraphs below.
- 32.3 Any disposal must be authorised by the Section 151 Officer or Chief Executive.
- 32.4 Disposal must be either by public auction or by obtaining three quotes from suitable contractors.
- 32.5 The responsible officer for the disposal must ensure that the Council is receiving value or money, and that the contractor used is reputable and evidence of this must be retained.
- 32.6 Items for disposal must not be given to any member of staff without suitable authorisation from the Section 151 Officer or Chief Executive.

**Definitions Index**

<b>Agent</b>	A person or organisation acting on behalf of the Council or on behalf of another organisation.
<b>Award Criteria</b>	The criteria by which the successful quotation or tender is to be selected.
<b>Best Value</b>	The duty, which Part I of the Local Government Act 1999 places on local authorities, to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the Council. (Note: This terminology has now in many instances been superseded with Value for Money).
<b>Bond</b>	If the contractor does not meet the requirements of any contract with the Council, the Council can claim from the insurer the sum of money specified in the bond (often 10% of the contract value).
<b>Business Continuity Plan (BCP)</b>	A BCP is how an organisation prepares for future incidents that could jeopardise the organisation's core mission and its stability. Could include local incidents like building fires, regional incidents like floods, epidemics or national incidents such as a pandemic.
<b>Code of Conduct Committee</b>	The Council's code regulating conduct of staff. A committee, which has power to make decisions for the Council i.e. a joint committee with another local council but not a scrutiny committee.
<b>Constitution</b>	The constitutional document approved by the Council which: allocates powers and responsibility within the Council and between it and others;

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	delegates authority to act to Committees and staff; regulates the behaviour of individuals and groups through rules of procedure, codes and protocols.
<b>Consultant</b>	Someone employed for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role, and where the Council has no ready access to employees with the skills, experience or capacity to undertake the work.
<b>Contracting Decision</b>	Any of the following decisions: composition of approved lists; withdrawal of Invitation to Tender; whom to invite to submit a quotation or tender; short listing; award of contract; any decision to terminate a contract.
<b>Corporate Contract</b>	A contract let by the Council which provides goods or services for more than one service eg insurance.
<b>Council</b>	For the purposes of these Rules "Council" refers to Brentwood Borough Council (BBC).
<b>OJEU Threshold</b>	The contract value at which the EU public procurement legislation must be applied.
<b>Evaluation Report</b>	A report produced by the officer detailing the outcome of the evaluation process undertaken, from which a recommendation is put forward for approval by a director.
<b>High Profile</b>	A high-profile purchase is one which could have an impact on functions integral to Council service delivery including publicity and public interest should it fail or go wrong.
<b>High Risk</b>	A high-risk purchase is one which presents the potential for substantial exposure on the Council's part should it fail or go wrong.
<b>High Value</b>	A high-value purchase is one where the value is greater than that of the EU threshold values.
<b>Invitation to Tender</b>	Invitation to Tender documents in the form required.
<b>Key Decision</b>	A key decision is an non statutory decision which is likely to: result in the Council incurring expenditure which is, or, the making of savings which are significant having regard to the Council's budget for the service or function to which the decisions relates. The financial threshold set by the Council for key decisions is £100,000 for goods and services and £500,000 for works. be significant in terms of its effect on communities living or working in an area comprising two or more electoral divisions in the area of the Council.
<b>Line Manager</b>	The officer's immediate supervisor/manager or, the officer designated by the Chief Executive to exercise the role reserved to the line manager by these Contract Procedures.
<b>Nominated Suppliers and Sub-contractors</b>	Those persons specified in a main contract for the discharge of any part of that contract.
<b>Non-Commercial Considerations</b>	Except as provided below, the following matters are non-commercial considerations: (a) the terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces ("workforce

matters”);

(b) whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only;

(c) any involvement of the business activities or interests of contractors with irrelevant fields of government policy;

(d) the conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons (“industrial disputes”);

(e) the country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors;

(f) any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees;

(g) financial support or lack of financial support by contractors for any institution to or from which the Council gives or withholds support;

(h) use or non-use by contractors of technical or professional services provided by the Council under the Building Act 1984 or the Building (Scotland) Act 1959. Workforce matters and industrial disputes, as defined above in paragraphs (a) and (d) of this definition, cease to be non-commercial considerations to the extent necessary or expedient to comply with Best Value; or where there is a transfer of staff to which the Transfer of Undertakings (Protection of Employment) Rules [1984/2006 as amended](#) (“TUPE”) may apply.

**Officer**

The officer designated by the Chief Executive to deal with the contract in question.

**OJEU**

OJEU - the Official Journal of the European Union This is the publication in which all contracts from the public sector which are valued above EU thresholds must be published.

**Parent Company Guarantee**

A contract which binds the parent of a subsidiary company as follows: If the subsidiary company fails to do what it has promised under a contract with the Council, they can require the parent company to do so instead.

**Procurement Officer**

The Council’s corporate procurement officer charged with providing strategic direction, support and advice to secure value for money in the Council’s procurement activities.

**Procurement Strategy**

The document setting out the Council’s approach to procurement and key priorities for the next 2 - 3 years.

**Purchase Card**

A card issued to an officer or member by the Council, to be used for purchasing goods or services of low value or for one-off purchases.

**Quotation**

A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).

**Relevant Contract Section 151 Officer**

A contract to which these Contract Procedures apply. As identified in the Constitution. This person is nominated to deal with the Council’s Finances under Section 151 of the Local Government Act 1972.

**Tender**

A candidate’s proposal or offer submitted in response to an



**TUPE Transfer of Undertakings (Protection of Employment)**

Invitation to Tender.

TUPE refers to the Transfer of Undertakings (Protection of Employment) Rules, [1981/2006 as amended](#). Broadly, TUPE rules ensure that the rights of employees are transferred along with the business.

**Whistle Blowing Policy**

The Public Interest Disclosure Act 1998 encourages individuals to raise concerns about malpractice in the workplace. This policy document makes it clear that employees can raise serious concerns without fear of victimisation, subsequent discrimination or disadvantage. It's intended to encourage and enable employees to raise those concerns within the Council rather than overlooking a problem or 'blowing the whistle' outside. The policy applies to all employees and those contractors working for the Council on Council premises. For example, agency staff, builders, and drivers. It also covers suppliers and those providing services under a contract with the Council in their own premises.

**Workforce Matters**

Authorities cannot focus on matters classed as 'non-commercial' considerations as part of the contractual process. [There are limited exceptions. However,](#) ~~the~~ restrictiveness of the original definitions was considered too great, and so from 2001 authorities may consider the following matters to the extent that they are relevant to the delivery of best value or for the purposes of a TUPE transfer:

- the terms and conditions of employment by suppliers of their workers or the composition of, the arrangements for the promotion, transfer or training of or other opportunities afforded to, their workforces (section 17(5)(a));
- the conduct of suppliers or workers in industrial disputes between them (section 17(5) (d)). Restrictions on other non-commercial considerations listed in Section 17 of the Local Government Act 1988 remain in place. [In addition, the Public Services \(Social Value\) Act 2012 requires consideration of how services commissioned and procured might improve the economic, social and environmental well-being of the area.](#)

## Appendix 1 - Record of Waivers from Contract Procedures

Completion is not required for purchases using the Procurement Agency for Essex, Government Procurement Service, Pro5 or any other national or regional framework agreements. Dispensation is not permissible for contracts exceeding the EU Procurement Rules' thresholds. Please complete and return one authorised copy to the originating officer and a photocopy to the Section 151 Officer.

<b>Brief Overview of Goods, Services or Works Required (including name of contractor):</b>	
<b>Total Contract Value:</b>	£
<b>Contract Period:</b>	
<b>Terms and Conditions to be Used:</b> Brentwood Borough Council / Contractor * <i>(delete as appropriate)</i>	
<b>Evidence of Value for Money Obtained:</b>	
<b>Waiver is required for the following reason: (please tick box)</b>	
The Contract can only be supplied by one specialist organisation.	
There is an unforeseen emergency with potential risk to persons, property or Council Services	
The contract is an extension to an existing contract and a change of supplier would cause technical difficulties, diseconomies of scale or significant disruption to Council services	
<b>Reasons to Support and Evidence the Waiver (including supporting documents):</b>	
<b>Name of Officer Requesting Approval:</b>	
<b>Date:</b>	
<b>Approved by Section 151 Officer, Monitoring Officer <u>or</u> Chief Executive:</b>	
<b>Signed:</b>	<b>Date:</b>

07/04/2014

## PART 4.7 - STAFF EMPLOYMENT PROCEDURE RULES

### 1. Recruitment and appointment

#### (a) Declarations.

- (i) The Council will draw up a statement requiring any candidate for appointment as a member of staff to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing member officer of the Council; or of the partner of such persons.
- (ii) No candidate so related to a member or a member of staff of the Council will be appointed without the authority of the relevant chief officer or an officer nominated by them.

#### (b) Seeking support for appointment.

- (i) Subject to paragraph (iii), the Council will disqualify any applicant who directly or indirectly seeks the support of any member for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
- (ii) Subject to paragraph (iii), no member will seek support for any person for any appointment with the Council.
- (iii) Nothing in paragraphs (i) and (ii) above will preclude a member from giving a written reference for a candidate for submission with an application for appointment.

### 2. Recruitment of Head of Paid Service and Chief Officer

Where the Council proposes to appoint a chief officer the Council will:-

(a) draw up a statement specifying:

- (i) the duties of the officer concerned; and
- (ii) any qualifications or qualities to be sought in the person to be appointed;

Where the Council proposes to appoint a chief officer and it is not proposed that the appointment be made exclusively from among their existing staff, the Council will:-

(b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and

(c) make arrangements for a copy of the statement mentioned in paragraph (4a) to be sent to any person on request.

The term 'chief officer' in this context includes:-

- (a) the Head of Paid Service
- (b) the Chief Finance Officer ('Section 151 Officer')
- (c) any 'non-statutory chief officer' defined in section 2(7) of the Local Government

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and Housing Act 1989, namely:-

- (i) a person for whom the Head of Paid Service is directly responsible; or
- (ii) a person who, as respects all or most of the duties of his/her post, is required to report directly or is directly accountable to the Head of Paid Service or
- (iii) any person who, as respects all or most of the duties of his/her post, is required to report directly or is directly accountable to the local authority themselves or any committee or sub-committee of the authority
- (d) any 'deputy chief officer' defined in section 2(8) of the Local Government and Housing Act 1989, is required to report directly or is directly accountable to one or more of the Head of Paid Service or non-statutory chief officers.
- (e) NB. A person whose duties are solely secretarial or clerical or otherwise in the nature of support services shall not be regarded as a non-statutory chief officer or a deputy chief officer.

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### 3. **Appointment of Head of Paid Service**

The Council will approve the appointment of the Head of Paid Service following the recommendation of such an appointment by a Panel of Members (Staff Appointments Committee) comprising five councillors allocated between political groups in accordance with pro-rata rules.

A report will be made to Full Council following the member panel setting out the voting of the panel and its recommendation.

### 4. **Appointment of Statutory Chief Officers (S151 and Monitoring Officer)**

Every appointment of a Statutory Chief Officer shall be made by the Council Following the recommendation of such an appointment by a Panel of Members comprising not less than five councillors allocated between political groups in accordance with Widdicombe pro-rata rules.

A report will be made to Full Council following the member panel setting out the voting of the panel and its recommendation.

### 5. **Appointment of Non Statutory Chief Officers (Director and Heads of Service)**

Every appointment of a Non Statutory Chief Officer shall be made by a Panel of Members ([Staff Appointments Committee](#)) comprising not less than five councillors allocated between political groups in accordance with Widdicombe pro rata rules.

### 6. **Other appointments**

**Staff below chief officer.** Appointment of staff below chief officer is the responsibility of the Head of Paid Service or their nominee, and may not be made by members unless the Head of Paid Service or Full Council determine that staff below chief officer level be subject to a member panel.

### 7. **Disciplinary action**

- (a) **Suspension.** The Head of Paid Service, Monitoring Officer and Chief Finance Officer (Chief Statutory Officers) may be suspended whilst an investigation takes place into alleged misconduct in accordance with Part 4 of the JNC for Chief Officers of Local Authorities Handbook. That suspension will be on full pay and

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such suspension lasts no longer than two months (unless the designated independent person [see below] so directs).

- (b) Independent person. No other disciplinary action may be taken in respect of any of those staff except in accordance with a recommendation in a report made by a 'designated independent person' as defined in the Local Authorities (Standing Orders) (England) Regulations 2001 as amended.
- (c) Members will not be involved in the disciplinary action against any member of staff below chief officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to members in respect of disciplinary action.

8. **Dismissal**

Members will not be involved in the dismissal of any member of staff below chief officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to members in respect of dismissals. In relation to the Head of Paid Service, Section 151 Officer and the Monitoring Officer the Dismissals Committee (comprising of five councillors allocated between political groups in accordance with the political balance rules) shall decide whether any disciplinary action is appropriate but only in accordance with a recommendation of the 'designated independent person'.

## CHAPTER 5 - CODES AND PROTOCOLS

### PART 5.1 - MEMBERS' CODE OF CONDUCT

#### Part 1 – General Provision

#### Part 2 – Members' Interests

#### Part 3 – Register of Members' Interests

#### Appendix 1 – The Nolan Principles

#### Appendix 2 – The Conduct Complaint Process

### PART 1 GENERAL PROVISIONS

#### Introduction and interpretation

As a Member you are a representative of Brentwood Borough Council (“the Authority”) and the public will view you as such. Therefore your actions impact on how the Authority as a whole is viewed and your actions can have both positive and negative impacts on the Authority.

This Code as a whole is consistent with “Nolan Principles” which are set out in **Appendix 1** and the provisions of ~~S29(4)~~ [section 28\(1\) of the Localism Act 2011](#).

In this Code-

“beneficial interest” means having an economic benefit as a legal owner or holding it on trust for the beneficial owner, having a right to the income from the land or securities or a share in it or the right to the proceeds of sale or share of part of the proceeds of sale.

“confidential information” and “in confidence” means information which has been provided subject to an obligation of confidence or is confidential information or exempt information as defined in the Local Government Act 1972

“meeting” means any meeting of:

- (a) the Authority;
- (b) any of the Authority’s committees, sub-committees, joint committees, joint sub-committees or areas committees;

whether or not the press and public are excluded from the meeting in question by virtue of a resolution of Members.

- (d) any briefings by staff and site visits organised by the Authority.

“Member” includes a co-opted member.

“profit or gain” includes any payments or benefits in kind which are subject to Income Tax.

“relevant period” means the period of 12 months ending with the day on which you give

notification to the Authority's Monitoring Officer of any disclosable pecuniary interests you had at the time of the notification.

~~"profit or gain" includes any payments or benefits in kind which are subject to Income Tax.~~

~~"beneficial interest" means having an economic benefit as a legal owner or holding it on trust for the beneficial owner, having a right to the income from the land or securities or a share in it or the right to the proceeds of sale or share of part of the proceeds of sale.~~

~~"Member" includes a co-opted member.~~

1. **Who does the Code apply to?**

1. This Code applies to all Members of the Authority including co-opted members.
2. It is your responsibility to comply with the provisions of this Code.

2. **What does the Code apply to?**

1. You must comply with this Code whenever you:
  - (a) conduct the business of the Authority, or
  - (b) you are acting as a representative of the Authority.
2. This Code has effect in relation to your conduct in your official capacity.
3. Where you act as a representative of the Authority:
  - (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
  - (b) on any other body, you must, when acting for that other body, comply with the Authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

3. **General obligations**

1. You must treat others with respect.
2. You must uphold the law.
3. You must not:
  - (a) do anything which may cause the Authority to breach any of the equality enactments;
  - (b) bully any person;
  - (c) intimidate or attempt to intimidate any person who is or is likely to be:
    - (i) a complainant;
    - (ii) a witness; or

(iii) involved in the administration of any investigation or proceedings;

in relation to an allegation that a Member (including yourself) has failed to comply with the Authority's code of conduct; or

(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Authority.

#### 4. **Confidential Information**

You must not:

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is:

(aa) reasonable and in the public interest; and

(bb) made in good faith and in compliance with the reasonable requirements of the Authority.

(b) prevent another person from gaining access to information to which that person is entitled by law.

#### 5. **Conferring an advantage or disadvantage**

You must:

(a) not use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage;

(b) when using or authorising the use by others of the resources of the Authority:

(i) act in accordance with the Authority's reasonable requirements;

(ii) ensure that such resources are not used improperly for political purposes (including party political purposes);

(c) (iii) have regard to any applicable Local Authority Code of Publicity

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made under the Local Government Act 1986.

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**PART 2 - MEMBERS INTERESTS****6. Disclosable Pecuniary Interests**

6.1 You have a Disclosable Pecuniary Interest in any business of the Authority if it is of a description set out in 6.2 below and is either:

- (a) An interest of yours; or
- (b) An interest (of which you are aware) of a spouse, civil partner or a person you are living with as a spouse or civil partner ("known as Relevant Persons" and "Relevant Person" shall be construed accordingly).

6.2 A Pecuniary Interest is an interest which relates to or is likely to affect:

- (a) any employment, office, trade, profession or vocation carried on by you or a Relevant Person for profit or gain;
- (b) any payment or provision of any other financial benefit (other than from the Authority) made or provided within the relevant period in respect of any expenses incurred in carrying out your duties as a Member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992;
- (c) any contract for goods, services or works which has not been fully discharged between you or a Relevant Person and the Authority or a body in which you or they have a beneficial interest;
- (d) a beneficial interest in any land in the Authority's area;
- (e) a licence of any land in the Authority's area (alone or jointly with others) that you or a Relevant Person occupy for a month or longer;
- (f) any tenancy where to your knowledge (a) the landlord is the Authority and (b) the tenant is a body in which you or a Relevant Person has a beneficial interest;
- (g) any beneficial interest in securities of a body where:
  - 1. that body (to your knowledge) has a place of business or land in the area of the Authority; and
  - 2. either:
    - (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
    - (ii) the beneficial interest exceeds one hundredth of the total issued share capital of the share capital of that body, if of more than one class, the total nominal value of the shares of any one class.

**7. Other Pecuniary Interests**

You have a pecuniary interest in any business of the Authority where it relates to or is likely to affect:

- (i) any person or body who employs or has appointed you;
- (ii) any contract for goods, services or works made between the Authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specific in paragraph 6.2.(g) which has been fully discharged within the last 12 months.

#### 8. **Non-Pecuniary Interests**

You have a non-pecuniary interest in any business of the Authority where it relates to or is likely to affect-

- (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Authority;
- (ii) any body:

(a) exercising functions of a public nature;

(b) directed to charitable purposes; or

(c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union);

of which you are a member or in a position of general control or management;

(iii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £50;

(iii) a decision in relation to that business which might reasonably be regarded as affecting your wellbeing or the wellbeing of a relevant person to a greater extent than the majority of:-

(a) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or

(b) (in all other cases) other council tax payers, ratepayers or inhabitants of the Authority's area.

#### 9. **Disclosure of Interests (Disclosable Pecuniary Interests, Other Pecuniary Interests and Non-Pecuniary Interests)**

9.1 Subject to sub-paragraphs 9.2 to 9.3, where you have a Disclosable Pecuniary Interest, other Pecuniary Interest or Non-Pecuniary Interest in any business of the Authority and you are present at a meeting of the Authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest whether or not such interest is registered on your Register of Interests or for which you have made a pending notification.

9.2 Sub-paragraph 9.1 only applies where you are aware or ought reasonably to be aware of the existence of the Relevant Person's Interest.

9.3 Where you have an interest in any business of the Authority which would be

disclosable by virtue of paragraph 9.1 but by virtue of paragraph 12 (Sensitive Information) details of the interest are not registered in the Authority's published Register of Members' Interests and the interest is a Disclosable Pecuniary Interest you need not disclose the nature of the interest to the meeting. You must however disclose the fact (not the details) that there is a Disclosable Pecuniary Interest in the matter concerned.

- 9.4 Where you have a Pecuniary Interest in any business of the Authority and a function of the Authority may be discharged by you acting alone in relation to that business, you must ensure you notify the Authority's Monitoring Officer of the existence and nature of that interest within 28 days of becoming aware that you will be dealing with the matter even if more than 28 days before you will actually deal with the business.

~~9.5 Where you have an interest in any business of the Authority which would be disclosable by virtue of paragraph 9.1 and you have made an executive decision in relation to that business you must ensure that any written statement of that decision records the existence and nature of that interest. In this paragraph "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.~~

## 10. **Effect of Interests on participation**

### 10.1 **Disclosable Pecuniary Interests**

- (a) If you are present at a meeting of the Authority or of any committee, sub-committee, joint committee or joint sub-committee of the Authority and you have a Disclosable Pecuniary Interest in any matter to be considered, or being considered, at the meeting and you are aware of that Interest:
- (i) You must not participate, or participate further, in any discussion of the matter at the meeting, or participate in any vote, or further vote, taken on the matter at the meeting;
  - (ii) You must withdraw from the room or chamber where the meeting considering the business is being held unless you have received a dispensation from the Authority's proper officer;
- (b) If you have a Disclosable Pecuniary Interest in any business of the Authority you must not:
- (i) exercise delegated functions in relation to that business; and
  - (ii) seek improperly to influence a decision about that business.
- (c) If a function of the Authority may be discharged by a Member acting alone and you have a Disclosable Pecuniary Interest in any matter to be dealt with or being dealt with in the course of discharging that function you may not take any steps or any further steps in relation to the matter (except for the purpose of enable the matter to be dealt with otherwise than by yourself).

### 10.2 **Other Pecuniary Interests**

If you have an Other Pecuniary Interest in any business of the Authority which a member of the public with knowledge of the relevant facts would reasonably regard as

so significant that it is likely to prejudice your judgement in the public interest and you are present at a meeting of the Authority at which such business is to be considered or is being considered you must:

- (i) disclose the existence and nature of the interest in accordance with paragraph 9.1 (but subject to paragraph 9.3); and
- (ii) withdraw from the room or chamber where the meeting considering the business is being held unless you have obtained a dispensation from the Authority's proper officer.

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## **PART 3 REGISTER OF MEMBERS' INTERESTS**

### **11. Registration of Members' Interests**

Subject to paragraph 12, you must, within 28 days of:

- (i) this Code being adopted by or applied to the Authority; or
- (ii) your election, re-election or appointment or re-appointment to office (where that is later), or co-opted onto the Authority

register in the Authority's Register of Members' Interests (maintained by the Monitoring Officer under Section 29(1) of the Localism Act 2011) details of:

- (iii) Disclosable Pecuniary Interests as referred to in paragraph 6 that you, your spouse, civil partner or person with whom you live as if they were your spouse or civil partner in so far as you are aware of their interests at that time.
- (iv) Pecuniary Interests referred to in paragraph 7 that you have.

Subject to paragraph 12, you must within 28 days of becoming aware of any new Disclosable Pecuniary Interest as referred to in paragraph 6 that you, your spouse, civil partner or person with whom you live as if they were your spouse or civil partner or change to any Disclosable Pecuniary Interest registered under paragraphs 11(iii) or (iv) above by providing written notification to ~~your authority's~~the Monitoring Officer.

[NB. Deregistration. Once the person concerned no longer has the interest or is \(otherwise than transitorily on re-election or re-appointment\) neither a member nor a co-opted member of the Authority, the entry may be removed from the Register of Members' Interests.](#)

### **12. Sensitive Information**

- 12.1 Where you have a Disclosable Pecuniary Interest referred to in paragraph 6 or pecuniary interest referred to in paragraph 7 and the nature of the interest is such that you and the Authority's Monitoring Officer consider that disclosure of details of the interest could lead to you or a person connected with you being subject to violence or intimidation if the interest is entered in the Authority's Register then copies of the register available for inspection and any published version of the Register should not include details of the interest but may state that you have an interest details of which are withheld under s32(2) of the Localism Act 2011 and/or this paragraph.
- 12.2 You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph 12.1 is no longer sensitive information, notify the Authority's Monitoring Officer.
- 12.3 In this Code "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subject to violence or intimidation.

### **13. Register of Gifts and Hospitality**

- 13.1 You must within 28 days of receipt, notify the Authority's Monitoring Officer in writing of any gift, benefit or hospitality with a value in excess of £50 which you have accepted as a

member from any person or body other than the Authority.

- 13.2 The Monitoring Officer will place your notification on a public register of gifts and hospitality.
- 13.3 This duty to notify the Monitoring Officer does not apply where the gift, benefit or hospitality comes within any description approved by the Authority for this purpose.

## APPENDIX 1

## CODE OF CONDUCT

## THE NOLAN PRINCIPLES AND SECTION 28(1) OF THE LOCALISM ACT 2011

**SELFLESSNESS**

~~To serve only the public interest and never improperly confer an advantage or disadvantage on any person.~~ Holders of public office should act solely in terms of the public interest.

**INTEGRITY**

~~Not to place themselves in situations where their integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.~~ Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

**OBJECTIVITY**

~~Make decisions on merit, including when making appointments, awarding Contracts or recommending individuals for rewards or benefits.~~ Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

**ACCOUNTABILITY**

~~To be accountable to the public for their actions and the manner in which they carry out their responsibilities and should co-operate fully and honestly with any scrutiny appropriate to their Office.~~ Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

**OPENNESS**

~~To be as open as possible about their actions and those of the Council and should be prepared to give reasons for those actions.~~ Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

**HONESTY**

~~Not to place themselves in situations where their honesty may be questioned, should not behave improperly and should, on all occasions, avoid the appearance of such behaviour.~~ Holders of public office should be truthful.

**LEADERSHIP**

~~Should promote and support these principles by leadership and by example and should always act in a way that secures or preserves public confidence.~~ Holders of public office should exhibit these principles ('The seven principles of public life') in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.



## APPENDIX 2

## THE CONDUCT COMPLAINT PROCESS

1. **Introduction**

1.1 This procedure provides for the receipt, initial assessment, investigation and determination of complaints made under the Code of Conduct for Members (and [such relevant Code\(s\) of Conduct for Parish Councillors](#))

1.2 The following terms used in this Procedure are defined as follows:

<b><u>Appellant</u></b>	<a href="#">The person appealing a decision under this Procedure</a>
<b>Complainant</b>	the person making the complaint
<b><u>Hearing</u></b>	<a href="#">A hearing is an ad hoc meeting of the Council's Monitoring Officer and Independent Person who will conduct a local hearing to consider whether the Member has failed to comply with the Code of Conduct</a>
<b><u>Independent Person</u></b>	<a href="#">A person or persons appointed by the Council to merely advise it or the Member on the determination of complaints.</a>
<b><u>Investigator</u></b>	<a href="#">either an officer of the Council and/or an independent Investigator whom the Monitoring Officer has asked to investigate a complaint</a>
<b>Member</b>	the elected Councillor or Co-opted Member subject to the complaint (and Parish Councillors)
<b><u>Investigator</u></b>	<a href="#">either an officer of the Council and/or an independent Investigator whom the Monitoring Officer has asked to investigate a complaint</a>
<b>Monitoring Officer</b>	The Council officer with statutory responsibilities under section 5 of the Local Government and Housing Act 1989 and as set out below in this Code
<b><u>Independent Person</u></b>	<a href="#">A person or persons appointed by the Council to advise it or the Member on the determination of complaints.</a>

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<b>Hearing</b>	A hearing is a ad hoc meeting of the Council's Monitoring Officer and Independent Person who will conduct a local hearing to consider whether the Member has failed to comply with the Code of Conduct
<b>Appellant</b>	the person appealing a decision under this Procedure
<b>Respondent</b>	the person responding to an appeal.

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## 2. How to make a complaint

2.1 Any person may make a complaint under the Code of Conduct.

Complaints must:

2.1.1 be made in writing using the 'Complaints against Members form' available on the Council's website and should be submitted via the website;

2.1.2 include the full name and address of the Complainant;

2.1.3 identify the Member complained of;

2.1.4 set out the nature and substance of the alleged breach of the Code of Conduct for Members and attach evidence to support the allegation; and

2.1.5 indicate the remedy or remedies the Complainant would hope to achieve by submitting the complaint.

2.2 Upon receipt of a complaint complying with 2.1 above, the Monitoring Officer will send a copy of the Complaint to the Member and the Group Leader (or Chair in the case of a Parish Councillor) and the Independent Person. If the Leader or an Independent Member is the subject of the complaint, the Mayor will be notified and replace the Group Leader in this process.

## 3. Initial assessment

3.1 The Council's Monitoring Officer will receive and assess all complaints to determine whether the complaint should be investigated. If the Monitoring Officer considers that s/he can resolve the complaint through informal mediation or discussion, s/he may take this step before determining whether a complaint should be investigated. If the allegations appear to be of a criminal nature, the Monitoring Officer may prepare a file of papers and refer the matter to the Police, He/she will take no further action until the referral has been disposed of. A criminal matter is one where an offence appears to have been committed under the Localism Act 2011 or under any other relevant legislation. Under Section 34(l) of the Localism Act 2011, an offence is committed if a Member fails without reasonable excuse to notify the Council of the relevant Disclosable Pecuniary Interest as required under the code and as described in the Act or participates in a debate and votes on a matter having disclosed relevant Interests without prior dispensation. Such action carries with it the prospect of criminal prosecution.

3.2 In making his/her decision, the Monitoring Officer will consult the Council's Independent Person (or where it has more than one Independent Person, one of the Independent Persons).

3.3 The following complaints are normally not suitable for investigation, save where the Monitoring Officer accepts there are exceptional circumstances:

3.3.1 Complaints that are really about Council services, its policies or performance. Such complaints will be referred to the relevant service area in accordance with the Council's Complaints Policy.

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- 3.3.2 Complaints that are really about the political policies or performance of a councillor in their role. Such complaints will be referred to the councillor and / or their political group for response.
  - 3.3.3 Complaints that relate to another authority or an alleged breach of another authority or body's Code of Conduct.
  - 3.3.4 Vexatious or frivolous complaints or complaints which are intended to insult individuals.
  - 3.3.5 Minor complaints that do not justify the time and resources of an investigation.
  - 3.3.6 Complaints made after one year of the matter or event being complained about and the Complainant has not brought it to the attention of the Monitoring Officer within 3 months of first becoming aware of it.
  - 3.3.7 Complaints by a Member against another Member will not normally be investigated until the Monitoring Officer considers that other processes, e.g. informal mediation or political group processes have been exhausted.
  - 3.3.8 Complaints by officers should be first made under the Member/Officer Protocol.
  - 3.3.9 Complaints that are already subject to other internal or external processes will not be investigated until those other processes have been completed to enable the complaint to be resolved by other means. Determination of such complaints will be suspended until the other process is finalised.
  - 3.4 The Monitoring Officer may require further evidence or information from the Complainant. The Monitoring Officer may request an initial response from the Councillor complained of (or any other person) or take any other steps s/he considers reasonable to assist his/her determination.
  - 3.5 The Monitoring Officer will inform the Complainant, Member and Member's Group Leader (or Chair in the case of a Parish Councillor) in writing of his/her decision within 30 days of receipt of the complaint. Where the Monitoring Officer is not able to respond within this time, s/he will inform the Complainant, Member and Member's Group Leader (or Chair in the case of a Parish Councillor) of the date by which a decision will be made. The decision would be kept on file and only released to a wider audience with the consent of the accused.
  - 3.6 The Complainant will have 7 days from the date of the Monitoring Officer's letter to ask for a review of a decision not to investigate a complaint. The application for review must be submitted in writing to the Monitoring Officer setting out the reasons for the review. The review will be determined by the Council's Chief Executive. If the Chief Executive considers the review should be upheld, the complaint will be investigated in accordance with Section 4.

#### 4. **Investigation**

- 4.1 If the Monitoring Officer decides an investigation is necessary, he/she may arrange for the complaint to be investigated by either an officer of the Council and / or an independent investigator. This will focus on investigation of the factual evidence in support or against the allegation. There is an expectation that the Member concerned will co-operate with the investigation.

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## 5. Hearing

5.1 Unless the Monitoring Officer is of the opinion, after consultation with the Independent Person and the Member's Group Leader (or Chair in the case of a Parish Councillor), that an informal or conciliated outcome may be reached to the satisfaction of the parties, the Monitoring Officer in consultation with the Independent Person will hold a local hearing. The hearing will consider whether the Member has failed to comply with the Code of Conduct and will take account of whether the Member co-operated in the investigation. The hearing will be held within 30 days of the conclusion of any investigation.

5.2 The Hearing will normally take the following order:

- **The Complainant's Case**

The Complainant presents their evidence and calls any witnesses. The Member may then question the Complainant and any witnesses.

- **The Member's Case**

The Member presents their evidence and calls any witnesses. The Complainant may then question the Member and any witnesses.

- **Final Submissions**

The Complainant and Member will present their final submissions in this order.

5.3 The Monitoring Officer and Independent Person may ask questions of any person at any time.

5.4 After the hearing, the Monitoring Officer in consultation with the Independent Person will decide whether there has been a breach of the code.

5.5 After reaching a decision, all parties will be informed of the decision in writing to them within 7 days. Any verbal decision must be followed by written confirmation of the Monitoring Officer's decision and his/her reasons within 7 days.

## 6. Sanction

6.1 The Monitoring Officer's findings would be reported to the Group Leader (or Chair in the case of a Parish Councillor) who has one month to decide on an appropriate sanction and to advise the Monitoring Officer and Independent Person of his/her decision.

6.2 Where the Independent Person is dissatisfied with the Group Leader's response (or the Chair's response in the case of a Parish Councillor), or the Group Leader (or Chair in the case of a Parish Councillor) fails to respond within one month or the Member does not comply with the agreed sanctions within one month, the Independent Person would prepare a report to Council for decision.

6.3 Where a Member is found in breach of the Code of Conduct, there is no statutory power to sanction the Member. The sanctions that may be considered by Council will include one or more of the following (or any other lawful sanction as advised by the Monitoring Officer):

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- 6.3.1 publish the Monitoring Officer's findings in respect of the Member's conduct;
  - 6.3.2 censure or reprimand the Member;
  - 6.3.3 recommend to the Member's Group Leader (or in the case of an un-grouped Member, recommend to Council or to committees) that he/she be removed from any or all committees or sub-committees of the Council;
  - 6.3.4 instruct the Monitoring Officer to arrange training for the Member;
  - 6.3.5 remove the Member from all outside appointments to which he/she has been appointed or nominated by the authority;
  - ~~6.3.6 withdraw facilities provided to the Member by the Council, such as a computer, website and/or email and internet access; or~~
  - 6.3.7 exclude the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, committee and sub-committee meetings, working groups or where the Chief Executive has given prior consent.

#### 7. **Appeals against a determination hearing decision**

- 7.1 With the exception of appeals regarding the Monitoring Officer's decision not to investigate at the initial assessment stage, there is no right of appeal by either party against a decision of the Monitoring Officer.
- 7.2 If the Complainant feels that the authority has failed to deal with the complaint properly, a member of the public may make a complaint to the Local Government Ombudsman where they feel an injustice has been caused. The Law does not provide for councillors to complain to the Local Government Ombudsman in that capacity.

#### 8. **Governance**

- 8.1 The hearings are not subject to the Council's Procedure Rules as they apply to committees save as required by law.
- 8.2 The Council's Access to Information Rules will not apply and the Monitoring Officer's hearings will not normally be held in public.

## PART 5.2 - MEMBERS' PLANNING CODE OF GOOD PRACTICE

### Introduction & Background

This code has been prepared in response to the Local Government Association's Guidance note on the preparation of Local Codes of Good Practice on Planning Matters in the light of the introduction of the ~~new~~ ethical framework and has been updated following the changes made under the Localism Act 2011.

**The aim of this code of good practice:** to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

**The key purpose of Planning:** to control development in the public interest.

**Your role as a Member of the Planning Authority:** to make planning decisions openly, impartially, with sound judgement and for justifiable reasons, recognising that you act under the principle of democratic accountability rather than in a quasi-judicial capacity.

**When the code applies:** this code of good practice applies to Members at all times when involving themselves in the planning process. (This includes, where applicable, when part of decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers of the public and consultative meetings). It applies as equally to planning enforcement matters as it does to planning applications.

If you have any doubts about the application of this code to your own circumstances you should seek advice early, preferably well before any meeting takes place.

### Relationship of the Members' Code of Conduct: General

- **Do** apply the rules in the Members' Code of Conduct first, which must always be complied with.
- **Do** then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of planning control. If you do not abide by this Code of Good Practice, you may put:
  - The Council at risk of proceedings on the legality ~~of or~~ maladministration of the related decision; and
  - yourself at risk of either being named in a report made to the ~~Standards Committee or~~ Council or, if the failure is likely to also be a breach of the Code of Conduct, a complaint being made to the ~~Standards Board for England~~ Monitoring Officer.

### Development Proposals and Members' Interests

- **Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members.
- **Do** then act accordingly. Where your interests is ~~prejudicial~~ a pecuniary:-
- **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.

- **Don't** try to represent ward views, get another (ward) Member to do so instead.
- **Don't** get involved in the processing of the application.
- **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include using your position to discuss personally with officers an application in which you have a [personal-disclosable pecuniary interest, other pecuniary interest and/or prejudicial-non-pecuniary interest](#) when other members of the public would not have the opportunity to do so.
- **Do** be aware that, whilst you're not prevented from seeking to explain and justify a proposal in which you have a [prejudicial-disclosable pecuniary interest or other pecuniary interest](#) to an appropriate officer (in person or in writing), the Code places greater limitations on you in representing that proposal than would apply to a normal member of the public. (For example, where you have a [personal and prejudicial interest-disclosable pecuniary interest or other pecuniary interest](#) in a proposal to be put before a meeting, you will have to withdraw from the room or chamber whilst the meeting considers it, whereas an ordinary member of the public would be able to make use of the public speaking scheme to address the meeting on the proposal and observe the meeting's consideration of it from the public gallery.)
- **Do** notify the Monitoring Officer in writing of your own proposals and those where you act as agent for a third party - this notification should be made no later than submission of the application. These proposals [will](#) be dealt with under normal planning procedures.

#### Fettering Discretion in the Planning Process

- **Don't** fetter your discretion and therefore your ability to participate in planning decision making at the Council by making up your mind, or appearing to have made up your mind, on how you will vote on any planning matter (including whilst serving on another body) prior to formal consideration of the matter at a meeting(s) of the planning authority and of your hearing the officer's representation and evidence and arguments on both sides. [You are entitled to have a predisposition towards any matter but must keep you mind open to persuasion until the moment of decision. This is confirmed by section 25 of the Localism Act 2011. It is however unlawful to predetermine any matter.](#)
- Fettering your discretion in this way may put the Council at risk of a finding of maladministration and of legal proceedings in respect of the decision on the grounds of a danger of [actual or perceived](#) bias or pre-determination or of a failure to have taken into account all of the factors enabling the proposal to be considered on its merits.
- **Do** be aware that the above includes where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal, either on behalf of the Council or in respect of a particular areas. Through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public, as being no longer able to determine the application purely on its planning merits or to act impartially in respect of the application.
- **Do** consider, where you have been significantly involved in the preparation, submission or advocacy of a planning proposal on behalf of:



- another local or public authority of which you are a member; or
- a body to which you have been appointed or nominated by the Council as its representative,

that

~~it is recommended you disclose any personal and prejudicial relevant interest (the Members Code of Conduct allows for an exemption in that you may choose not to regard yourself as having a prejudicial interest in matters which relate to these organisations); but~~

~~should you decide to make use of the exemption, you will have fettered your discretion (as described in the paragraph above)~~

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and you should act accordingly.

- **Don't** speak and vote on an application/matter where you have fettered your discretion. You do not also have to withdraw, but you may prefer to do so for the sake of appearances.
- **Do** explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.
- **Do** take the opportunity to exercise your separate rights as Ward Member where you have already represented your views or those of local electors in this way and therefore fettered your discretion, but do not have a personal-disclosable pecuniary interest, other pecuniary interest or non-pecuniary interest. Where you do:
  - advise the proper officer or Chairperson that you wish to speak in this capacity before commencement of the item;
  - remove yourself from the member seating area for the duration of that item; and
  - ensure that your actions are recorded.
- **Do** decide where you wish to exercise your decision-making powers.

#### Lobbying of and by Councillors

- **Don't** declare to any person the way you intend to vote, or express an opinion on the merits in such a way or of such firmness that it implies the same thing as this will result in you having fettered your discretion.
- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality to express a firm point of view or an intention to vote one way or another.
- **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal wherever possible. If a degree of hospitality is unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible and remember to register the gift or hospitality where its value is over £25 [in accordance with the authority's Authority's rules on gifts and hospitality].
- **Do** come to meetings with an open mind still open to persuasion and demonstrate that you are open-minded.

- **Do** remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will have fettered your discretion and you are likely to have a ~~personal and prejudicial~~disclosable pecuniary interest or other pecuniary interest and have to withdraw.
- **Do** join interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE or a local civic society, but declare a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation that you must reserve judgement and the independence to make up your own mind on each separate proposal.
- **Don't** excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
- **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts of hospitality), who will in turn advise the appropriate officers to follow the matter up.
- **Do** note that, unless you have a ~~personal and prejudicial~~disclosable pecuniary interest, other pecuniary interest or non-pecuniary interest, you will not have fettered your discretion or breached this or Planning Code of Good Practice through:
  - listening or receiving viewpoints from residents or other interested parties;
  - making comments to residents, interested parties, other Members or appropriate officers, provided they do not consist of or amount to prejudging the issue and you make clear you are keeping an open mind;
  - seeking information through appropriate channels; or
  - being a vehicle for the expression of opinion or speaking at the meeting as a ward member, provided you explain your actions at the start of the meeting/item and make it clear that, having expressed the opinion or ward view, you have not committed yourself to vote in their interest and will make up your own mind having heard all the facts and listened to the debate.

#### Ward Member Rights

- **Do** exercise your separate rights as a Ward Member where you wish to act as a representative of your local area, reporting and advocating the views of your constituents. If you do, however, it follows you will no longer be acting impartially.
- As a Ward Member you will be given the opportunity to speak where you have declared your opinion in advance on the matter.

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- **Do** advise the Chairperson in advance and announce at the meeting your intention to speak and represent the views of residents at the meeting.
  - **Don't** when exercising these rights as a Ward Member participate in any vote on the matter.

#### Contact with Applicants, Developers and Objectors

- **Do** refer those who approach you for planning, procedural or technical advice to officers.
- **Don't** agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the Chief Planning Officer to organise it. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action and that the meeting is properly recorded on the application file.
- **Do** otherwise:
  - follow the rules on lobbying;
  - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
  - report to the Chief Planning Officer any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

#### **In addition in respect of presentations by applicants' developers:**

- **Don't** attend a planning presentation unless an officer is present and/or it has been organised by officers.
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application, this will be carried out by the appropriate Committee of the planning authority.
- **Do** be aware that a presentation is a form of lobbying and you must not express any strong view or state how you or other Members might vote.

#### Officers

- **Don't** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Chief Planning Officer which may be incorporated into any committee report).
- **Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's

Code of Professional Conduct. As a result, planning officers' views, opinion and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

#### Decision Making

- **Do** comply with ~~section 54A~~[Section 70\(2\) of the ~~town-Town~~ and Country Planning Act 1990 and Section 38 \(6\) of the Planning and Compulsory Purchase Act 2004](#) and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- **Do** come to your decision only after due consideration of all of the information reasonably required to base a decision upon. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request it. If necessary, defer.
- **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.

#### Public Speaking at Meetings

- **Do** ensure that you comply with the Council's procedures in respect of public speaking.
- **Don't** allow members of the public to otherwise communicate with you (orally or in writing) during the committee's proceedings, as this may give the appearance of bias.

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**PART 5.3 - STAFF CODE OF CONDUCT****Subject****Introduction**

- Application
- Purpose of the Code
- Status of the Code
- Non-Observance of the Code

**Dealings with the Public**

- General
- Standards of Dress
- Consumption of Alcohol
- Smoking
- Complaints

**Disclosure and Use of Confidential Information**

- Disclosure of Information
- Use of Information by Employees

**Equality Issues****Political Neutrality**

- When Carrying Out Work
- Dealings with Members
- Undue Political Influence

**Acceptance of Gifts**

- General
- Gifts
- Criminal Law

**Hospitality**

- Accepting Hospitality
- Refusing Hospitality
- Sensitivity as to Timing of Hospitality
- Giving of Hospitality

**Disclosure of Interests**

- Underlying Principles
- Disclosure Generally
- Statutory Duty to Disclose Pecuniary Interests

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## 1. Introduction

### Application

- 1.1 This Code of Conduct applies to all Brentwood Borough Council employees (including those working within Direct Service Organisations) irrespective of the job that they do or the grade that they are on or, indeed, the status of the contract (e.g. permanent, fixed term, casual). Employees must be aware of and adhere to all the policies of the Council when reading this policy.
- 1.2 Members, officers and others acting on behalf of the Council including contractors and consultants are required to follow all guidance issued.

### Purpose of the Code

- 1.3 Brentwood Borough Council is a public authority and, as such, the public, and all other individuals and organisations who come into contact with the Council, are entitled to expect from its employees the highest standard of service in terms of integrity, efficiency, impartiality and courtesy.
- 1.4 This Code sets out the standards of conduct that Brentwood Borough Council employees should adhere to when carrying out their work and duties. In addition, its purpose is to maintain and improve standards and protect employees from misunderstanding or criticism.
- 1.5 Employees should always bear in mind that it is not enough to avoid actual impropriety or improper conduct. Employees should at all times endeavour to avoid any occasion for suspicion and any appearance of improper conduct or impropriety.

### Status of the Code

- 1.6 This Code has been formally approved and adopted by the Council.
- 1.7 The Council believes that the Code represents the standard against which the conduct of employees will be judged, both by the public and by their fellow employees. It is not an exhaustive listing of all standards expected of employees.

### Non-Observance of the Code

- 1.8 Failure to adhere to the Code can bring the Council and local government as a whole into disrepute. Such failure could also lead to a finding of maladministration on the part of the Council by the Local Government Ombudsman.
- 1.9 One of the purposes of the Code is to provide guidance to employees, and protect them from misunderstanding or criticism. It is therefore in each employee's own interest to adhere to the Code.
- 1.10 Employees also need to bear in mind that there will inevitably be some instances where there is an overlap between the provisions of the Code and the Council's disciplinary procedures. Accordingly, conduct which is contrary to the Code could result in disciplinary proceedings being instituted against the employee.
- 1.11 Furthermore, employees need to be aware that conduct which is contrary to certain provisions of the Code (e.g. those dealing with unauthorised disclosure of

confidential information) could, depending upon the precise circumstances of the case, also amount to an offence under criminal law (e.g. Data Protection Act) and thus result in prosecution of the employee concerned.

#### Interpretation

- 1.12 The Code is to be interpreted in spirit as well as by the letter. An employee who is in any doubt as to whether a particular provision in the Code is applicable to his/her situation should, in the first instance, refer the matter to his/her manager.

## **2. Dealings with the public**

#### General

- 2.1 Employees are expected to give the highest possible standard of service to the public and to the local community and to abide by the customer care standards set by the Council. Employees who, in the course of their employment, have contact with the public, whether face to face, over the telephone or by way of written correspondence should ensure that at all times they deal with the individual(s) in an efficient and courteous manner, irrespective of the circumstances.

#### Standards of Dress

- 2.2 Employees should dress in a manner appropriate to their role so as to ensure, so far as is reasonably possible, that no offence is caused to individual members of the public, including members of minority groups.
- 2.3 Smart business dress standards are to be observed at all times, unless special dispensation has been granted by the supervisor or line manager. Where a uniform is provided, this must be worn at all times.
- 2.4 Employees should refrain from wearing any badges, jewellery or insignia which might give offence or which could be taken to indicate that the wearer is a supporter of a particular political party or pressure group.

#### Alcohol and Drugs

- 2.5 Employees should refrain from consuming any alcohol or drug before or during their working day as it is likely to have an adverse effect on their work (for example, driving, operating machinery and supervising others) or if it would be inappropriate (for example, if their work brings them into face to face contact with the public).

#### Smoking

- 2.6 The provisions of the Council's No Smoking Policy must be observed by staff at all times.

#### Complaints

- 2.7 Employees who, in the course of their employment, have contact with the public should familiarise themselves with the Council's complaints procedure and, where appropriate, bring the procedure to the attention of members of the public.



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- 2.8 Employees should be prepared to disclose to any member of the public their name and position with the Council unless in any particular case they have genuine cause to believe that such disclosure might compromise their own personal safety.

3. **Disclosure and use of confidential information**

Disclosure of Information

- 3.1 Employees should not divulge by any means to any person(s) outside the Council or to any unauthorised person(s) within the Council confidential information ([including exempt information](#)) obtained in the course of their employment.
- 3.2 Employees should bear in mind that some information which the Council has in its possession is available to the public or other outside parties as of right. It is, however, the responsibility of each individual employee to satisfy himself or herself in any particular case that the disclosure is authorised and proper. In cases where there is any doubt as to whether information is confidential or not employees should refer to their manager.
- 3.3 Employees should also be aware that under the Data Protection Act 1998 the unauthorised disclosure of personal information held on computer is a criminal offence, punishable on conviction with a heavy fine.
- 3.4 This provision is not intended to preclude or discourage employees from communicating confidential information to the Council's Whistleblowing Officer, the Monitoring Officer or their own Head of Service, where such communication is necessary in order to bring to that Officer's notice conduct which is (or might be) unlawful or in breach of the Council's Disciplinary Standards.
- 3.5 The Council has in place a formal Whistleblowing Policy which is applicable to employees who have concerns that they feel should be raised in a confidential setting. Details can be obtained from the Personnel Office.

Use of Information by Employees

- 3.6 Employees must never use confidential or sensitive information obtained by them in the course of their employment for personal gain or benefit.

4. **Equality issues**

- 4.1 All employees should ensure that policies relating to equality issues as agreed by the Council are complied with in addition to the requirements of the law [such as under the Equality Act 2010](#). All members of the local community, customers and other employees have a right to be treated with fairness and equality.
- 4.2 The Council recognises and values all sections of the Community, and is committed to the planning and delivery of services which recognise the different needs of the community and which are non discriminatory regardless of race, religion, disability, health, status, age, gender or sexual orientation.
- 4.3 All members of staff are expected to observe the foregoing as part of their role within the Council.

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## 5. **Political neutrality**

### When Carrying Out Work

- 5.1 Employees (whether or not their post is designated as politically restricted) should follow every lawful expressed policy of the Council, and should not allow their own personal or political opinions to interfere with or influence their work.

### Dealings with Members

- 5.2 Employees should bear in mind that they serve the Council as a whole. They therefore serve all Members and not just those of the controlling group, and should ensure that the individual rights of all Members are respected.
- 5.3 Staff may from time to time be required to provide advice to the political groups on the Council. If this is the case staff must do so in ways which do not compromise their political neutrality. Information communicated to a staff member by a political group in confidence should not be communicated to other political groups.
- 5.4 Close personal familiarity between employees and individual Members can damage Officer/Member relationships and should be avoided in the conduct of Council business in order to avoid perceptions of bias or favouritism.
- 5.5 To avoid this problem, employees must declare to their Head of Service any close personal relationship with a Member.
- 5.6 It is not possible to define exactly the range of relationships that would be considered as close or personal. Examples however would include a family or sexual relationship and regular social mixing such as holidays or evening meals together.

### Undue Political Pressure

- 5.7 If any member of staff feels that a Member of the Council is seeking to exert undue political pressure on the individual, or is making requests that are considered to be overtly political in nature, then the matter should be reported immediately to the line manager and Head of Service.

## 6. **Acceptance of gifts etc**

### General

- 6.1 Except in the very limited circumstances set out below employees should not accept any fees, gifts or other benefits on their own behalf or on behalf of a third party, from any member of the public, pressure group or other outside party.

### Gifts

- 6.2 Employees may, either in the course of receiving authorised hospitality (see Section 7) or otherwise, accept gifts of a nominal value, such as biros, complementary notepaper, diaries, calendars etc.
- 6.3 Employees should however always be very cautious about accepting any gift(s) which could reasonably be regarded as having more than a nominal value. In such cases, the gift should be reported to the relevant Head of Service as to whether in all

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the circumstances it is appropriate for the gift to be accepted.

- 6.4 If such a gift is deemed to be acceptable, then it must be recorded in the departmental "Hospitality Book" detailing the nature of the gift, the recipient and the name of the organisation or individual presenting the gift.
- 6.5 Gifts which are deemed to be inappropriate to accept shall be courteously but firmly returned and the rejection must be recorded in the department 'Hospitality Book'. Any organisation or individual who strongly wishes to make a gesture of goodwill to the Council should be directed to the Mayor's Secretary in relation to the Mayor's Charity Fund.
- 6.6 In any particular instance, employees should always have regard to the criminal law position (see 6.8 below) and also how acceptance of such a gift might be perceived by the ordinary member of the public.
- 6.7 Items which have a significant or high monetary value should never be accepted.

#### Criminal Law

- 6.8 Employees should be aware that it is a serious criminal offence for them corruptly to receive any gift, loan, fee, reward or advantage for doing, or not doing anything, or showing favour or disfavour to any person in their official capacity. If an allegation is made then it is for the employee to demonstrate that any gift, loan, fee, reward actually received has not been corruptly obtained. [Attention is specifically drawn to the Bribery Act 2010.](#)

### 7. **Hospitality**

#### Accepting Hospitality

- 7.1 Employees should only accept offers of hospitality if these are occasions on which they are gathering, imparting or exchanging information or representing the Council.
- 7.2 Offers to attend purely social or sporting functions should be accepted only when these are part of the life of the community or where the Council should be seen to be represented.
- 7.3 Attendance at such functions should be authorised by the appropriate Head of Service and should be recorded in the departmental "Hospitality Book" detailing the nature of the hospitality, the recipient and the name of the organisation or individual providing the hospitality.
- 7.4 Acceptance of hospitality through attendance at relevant conferences, seminars and courses may be acceptable where it is clear that the hospitality is corporate rather than personal.

#### Refusing Hospitality

- 7.5 When hospitality has to be declined the person or organisation making the offer should be courteously but firmly informed of the procedures and standards operating within the Council and the rejection must be recorded in the department 'Hospitality Book'.

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#### Sensitivity as to Timing

- 7.6 When receiving authorised hospitality employees should be particularly sensitive as to its timing in relation to decisions which the Council may be taking affecting those providing the hospitality.

#### Giving of Hospitality

- 7.7 The giving of reasonable hospitality to visiting individuals, and in the course of meetings with outside individuals/organisations which take place off Council premises, is acceptable provided that:
- (i) the visit/meeting relates to Council business;
  - (ii) such hospitality is of a kind which is appropriate to the circumstances;
  - (iii) The hospitality does not compromise any purchasing decisions; and
  - (iv) the hospitality has been approved by the relevant Head of Service.

- 7.8 In some cases it may well be wrong not to offer hospitality. For example, the failure to offer a visitor basic refreshment (i.e. tea/coffee) would, in certain circumstances, be construed as discourteous, and possibly contrary to the Council's customer care ethos. Similarly, in the case of lengthy meetings the provision of a "working lunch" may well be appropriate.

- 7.9 Hospitality should never be lavish or extravagant. Employees should always have regard to how such hospitality might be perceived by ordinary members of the public - bearing in mind the Council is a public body funded in the main by local and central government taxation, and also the need for impartiality in relations with contractors and potential contractors.

#### Sponsorship

- 7.10 Where an outside organisation or individual wishes to sponsor or is seeking to sponsor a Council activity whether by invitation, tender, negotiation or voluntarily the basic principles above concerning gifts and hospitality apply.

### **8. Personal interests – disclosure etc**

#### The Underlying Principle

- 8.1 Employees should never use their positions with the Council to seek special favour or preferential treatment for themselves, or friends or relatives. Equally important, employees should not allow the impression to be created that they are, or may be, using their position to promote private or personal interests.

#### Disclosure Generally

- 8.2 Employees should disclose both on an annual basis and where individual circumstances change to their manager or Head of Service any personal interest (whether financial or non-financial in nature) which may affect, or be considered by others to affect, an employee's impartiality in any matter relevant to his/her duties.

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- 8.3 Non-financial interests could, for example, include involvement with an organisation receiving grant aid from the Council, or involvement with an organisation or pressure group which is seeking to influence or change the Council's policies.

Statutory Duty to Disclose any Pecuniary Interests

- 8.4 Employees must be aware that by law (Section 117 of the Local Government Act 1972) they are required to disclose in writing to the Council any pecuniary interest, whether direct or indirect, which they have in any contract which, to their knowledge, has been, or is proposed to be entered into by the Council. Failure to disclose such an interest is a serious criminal offence.
- 8.5 The Chief Executive maintains a register for the disclosure of pecuniary interests. This register is open to inspection by the public.
- 8.6 Employees who are not sure whether disclosure is required in a particular case should initially refer the matter to their manager or Head of Service.

9. **Relations with outside contractors and proposed contractors**

Familiarity with Standing Orders Etc.

- 9.1 Employees who make or advise on purchasing decisions or are otherwise involved in the ordering of goods or services on behalf of the Council must ensure that they are familiar with, and observe the provisions of, the Council's Standing Orders (Contracts) and Financial Regulations.

Awarding of Contracts and Orders

- 9.2 Employees who make purchasing decisions, or who are otherwise involved in the ordering of goods or services on behalf of the Council, must ensure that orders and contracts are awarded strictly in accordance with the Council's Standing Orders (Contracts) and that no special favour is shown, or preferential treatment given, to businesses run by partners, relatives, friends or former employees.

Disclosure of Private Work - The General Principle

- 9.3 Any employee involved in purchasing decisions (including the selection of persons invited to tender, and the evaluation of tenders etc) and who has, or has had, a private business relationship (as defined below) with a person or company whom they know has or is seeking to have a contractual relationship with the Council (whether for the supply of goods, services or construction works) should disclose that fact in writing to the Chief Executive.
- 9.4 The Chief Executive shall record the disclosure in a register which is kept for that purpose and which is open to inspection by the public.

Definition of a Private Business Relationship

- 9.5 An employee shall be taken to have a private business relationship with a person or company if that person or company has been engaged to carry out work to the employee's home or that of his/her family or close friend(s); or to supply any goods or services to the employee or his/her family or close friend(s).

Exceptions

9.6 This part of the Code shall not, however, be taken as requiring an employee to disclose a private business relationship with:

- (1) any public utility company or statutory undertaker (e.g. British Telecommunications Plc, Eastern Electricity, rail operators and other public transport companies) where work done or goods/services supplied is a kind which is provided or made available to a large section of the general population.
- (2) any bank or similar financial institution where the services provided are of a kind commonly provided or made available to other customers of the bank/institution.
- (3) any retail store or outlet (e.g. a supermarket or bookshop) where the private business relationship has arisen solely because the employee has purchased from the store/outlet

(during its opening hours) goods or services which, at the time of purchase were on display or offer to the general public at the same price and on the same terms.

Employees Who Supervise Contracts

9.7 Employees who supervise contractors should disclose in writing to the Chief Executive any private business relationship (as defined in 9.5 above) which they have, or have had, with any of the contractors which come within their supervision. The Chief Executive shall record the disclosure in a register which is kept for that purpose and which is open to inspection by the public.

10. Outside commitments

10.1 Employees should not engage in any outside employment which conflicts or may conflict with the Council's interests.

10.2 Certain employees, by virtue of their specific contracts of employment, are precluded from engaging in any outside employment unless they have first obtained the consent of the Council. An employee who wishes to take up outside employment must therefore first check the position with the [Personnel Manager/Human Resources Team](#).

10.3 The Council does encourage voluntary work, public duties and activities in support of local community groups, and employee involvement in these areas is welcomed.

11. Separation of roles during the tendering processSeparation of Roles

11.1 Employees involved in the tendering process and dealing with contractors should be clear on the separation of client and contractor roles within the Council.

Fairness and Impartiality

11.2 Employees in contractor or client units must exercise fairness and impartiality when

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dealing with all customers, suppliers, other contractors and sub-contractors.

12. **Use of council resources and property etc**

Use of Resources

- 12.1 Employees must ensure that they use public funds entrusted to them in a responsible manner. They should strive to ensure value for money to the local community.

Use of Council Property Etc

- 12.2 Council property, equipment (including telephones and computer/word processing hardware and software) and materials are provided in connection with the Council's official business purposes only, and are not provided for personal use.
- 12.3 Employees are required to observe the provisions of the Council's Telephones Code of Practice, and its Email and Intranet Protocols at all times. These documents are available separately.

Security

- 12.4 Employees should be mindful of the constant need to ensure, so far as is practicable, the security and safety of their fellow employees, and the safeguarding of Council property and buildings.
- 12.5 Each employee should endeavour to avoid acts or omissions on their own part which may be prejudicial to, or compromise, safety and security.

13. **Recruitment of staff and other employment matters**

Recruitment of Staff

- 13.1 Employees involved in appointments should ensure that these are made on the basis of merit and in accordance with the Council's recruitment procedure. In order to avoid any possible accusation of bias, employees should not be involved in an appointment where they are related to the applicant, or have a close personal relationship outside work with him or her.
- 13.2 The Council's Standing Orders contain a number of provisions relating to appointments. A copy of the Council's recruitment procedures can be obtained from the Personnel Section.
- 13.3 If you are involved in an appointment the only question you should consider is which candidate would best serve the whole Council. You must not let political or personal preferences influence your judgement in this respect. You must not canvass the support of other colleagues for any candidate, and you must resist any attempt by others to canvass you.

Other Employment Matters

- 13.4 Employees should not be involved in decisions relating to discipline promotion or pay adjustments for any employee who is a relative, partner or is someone with whom they have a close personal relationship.

14. **Relations with other employees**

Employees

- 14.1 Employees (irrespective of the job they do, or the grade which they are on) should at all times endeavour to treat each other with courtesy and respect in the workplace.
- 14.2 The Council endeavours to be a model employer. Failure to observe the above standard of behaviour can, among other things, lead to poor industrial relations, low staff morale and also a poor public perception of the Council as a whole.

15. **Generally**

- 15.1 If an employee has any doubt as to whether or not any action taken or contemplated on his/her part, or on the part of a third party, is likely to result or has resulted in a breach of this Code of Conduct then he/she should discuss the matter with his/her manager or Head of Service as soon as possible.





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**PART 5.4 - PROTOCOL ON MEMBER/STAFF RELATIONS**

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## PROTOCOL ON MEMBER/STAFF RELATIONS

### Introduction

Mutual trust and respect between Members and staff is at the heart of the Council's good governance. They are essential if the partnership necessary for the effective and efficient running of the Council is to succeed.

#### 1. **Scope**

1.1 This protocol is designed to:-

1. promote trust, openness, fairness and honesty by establishing clear ground rules;
2. define roles so as to clarify responsibilities
3. avoid conflict
4. prevent duplication or omission:
5. secure compliance with the law, codes of conduct and the Council's own practices and procedures and
6. to lay down procedures for dealing with concerns by Members or staff.

1.2 The protocol represents a central element of the Council's corporate governance and provides a framework for dealing with a wide range of circumstances.

#### 2. **General principles**

2.1 Members and staff must always respect the roles and duties of each other. They must show respect in all their dealings by observing reasonable standards of courtesy, and by not seeking to take unfair advantage by virtue of their position.

2.2 Members and staff are servants of the public their responsibilities are distinct.

(a) Members are accountable to the electorate and serve as long as their term of office lasts. Their role is to provide the political direction and leadership of the Council as well as setting the lawfully agreed policies.

(b) Staff are accountable to the Council as a whole. Their role is to give professional advice and provide support and information to Members both individually and collectively and to implement the lawfully agreed policies of the Council.

2.3 Staff are bound by the Council's Code of Conduct for staff and in some cases by the codes of their professional associations.

#### 3. **The role of Members**

3.1 Members have a number of roles and need to be alert to the potential for conflicts of interest which may arise between the roles. Where such conflicts are likely, Members may wish to seek the advice of senior colleagues, the relevant senior staff, and/or the Chief Executive.

3.2 Collectively, Members are the ultimate policy-makers determining the core values of the Council and approving the authority's policy framework, strategic plans and budget.

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- 3.3 Members represent the community, act as community leaders and promote the social, economic and environmental well-being of the community often in partnership with other agencies.
- 3.4 Every Member represents the interests of, and is an advocate for, his/her Ward and individual constituents. He/she represents the Council in the Ward, responds to the concerns of constituents, meets with partner agencies and often serves on outside organisations.
- 3.5 Members also have roles relating to their position as members of the Audit and Scrutiny Committee or other committees and sub-committees of the Council.
- 3.6 Members serving on the Audit and Scrutiny Committee monitor the effectiveness of the Council's policies and services and develop policy proposals in accordance with their terms of reference.
- 3.7 Members who serve on other committees and sub-committees collectively have delegated responsibilities, including deciding quasi-judicial or regulatory matters.
- 3.8 Some Members may be appointed to represent the Council on local, regional or national bodies.
- 3.9 Members may express the values and aspirations of the party political groups to which they belong, recognising that in their role as Members they have a duty always to act in the public interest.
- 3.10 Members are not authorised to instruct staff other than:
- (a) through the formal decision-making process;
  - (b) to request the provision of resources provided by the Council for Members' use;
  - (c) where employees have been specifically allocated to give support to a Member or group of Members;
  - (d) where an member of staff is contacted by multiple Members on the same Ward matter the member of staff is entitled to seek clarification from the resident / constituent as to who they wish to nominate as the lead Member for the member of staff to respond to about the matter
- 3.11 Members must avoid taking actions which are unlawful, financially improper or likely to amount to maladministration. Members must have regard when reaching decisions, to any advice provided by the Chief Executive, Monitoring Officer or the Chief Finance Officer (Section 151 Officer).
- 3.12 Members must respect the impartiality of staff and do nothing to compromise it, e.g. by insisting that an officer change his/her professional advice.
4. **The role of staff**
- 4.1 Staff are responsible for giving advice to Members to enable them to fulfil their roles.

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- 4.2 Under the direction and control of the Council (including, as appropriate, its committees and sub-committees), staff manage and provide the Council's services within the framework of responsibilities delegated to them.
- 4.3 Staff have a duty to implement decisions of the Council, its committees and sub-committees which are lawful, and which have been properly approved in accordance with the requirements of the law and the Council's Constitution and duly minuted.
- 4.4 Staff have a contractual and legal duty to be impartial. They must not allow their professional judgment and advice to be influenced by their own personal views.
- 4.5 Staff must assist and advise all parts of the Council. They must always act to the best of their abilities in the best interests of the authority as expressed in the council's formal decisions.
- 4.6 Staff must be alert to issues which are, or are likely to be, contentious or politically sensitive, and be aware of the implications for Members, the media or the public.

5. **The council as an employer**

- 5.1 Staff are employed by the Council as a whole.
- 5.2 Members' roles are:
- (a) the appointment of specified senior posts,
  - (b) determining human resources policies and conditions of employment,
- 5.3 Participating in the appointment of staff, Members should:
- (a) remember that the sole criterion is merit,
  - (b) never canvas support for a particular candidate,
  - (c) not take part where one of the candidates is a close friend or relative;
  - (d) not be influenced by personal preferences, and
  - (e) not favour a candidate by giving him/her information not available to the other candidates.

6. **The general relationship between Members and staff**

- 6.1 The conduct of Members and staff should be such as to instil mutual confidence and trust.
- 6.2 The key elements are recognition of and respect for each other's roles and responsibilities. These should be reflected in the behaviour and attitude of each to the other, both publicly and privately.
- 6.3 Staff serve the Council as a whole. They have a duty to implement the properly authorised decisions of the Council.

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- 6.4 Staff will make every effort to give timely responses to Members' enquiries in accordance with the agreed timescales.
  - 6.5 Informal and collaborative two-way contact between Members and staff is encouraged, but personal familiarity can damage the relationship, as might a family or business connection.
  - 6.6 Members and staff should inform the Chief Executive of any relationship which might be seen as unduly influencing their work in their respective roles.
  - 6.7 It is not enough to avoid actual impropriety. Members and staff should always be open about their relationships to avoid any reason for suspicion and any appearance of improper conduct.
  - 6.8 Where a personal relationship has been disclosed, those concerned should avoid a situation where conflict could be perceived. Specifically, a Member should not sit on a body or participate in any decision which directly affects that member of staff on a personal basis.
  - 6.9 Any member of staff shall not discuss with a Member personal matters concerning him/herself or another individual employee. This does not prevent him/her raising on a personal basis, and in his/her own time, a Council service related matter with his/her Ward Member.
  - 6.10 Members and staff should respect each other's free (i.e. non-Council) time.

7. **Local Members and staff**

- 7.1 To enable them to carry out their Ward role effectively, staff should endeavour to keep relevant Members properly informed about matters affecting their Ward in relation to:
  - (a) significant or sensitive operational matters;
  - (b) whenever any form of public consultation exercise is undertaken;
  - (c) during an overview and scrutiny investigation; and
  - (d) during the formative stages of policy development where practicalSenior staff must ensure that all relevant staff are aware of this requirement to keep Members informed, thus allowing Members to contribute to the decision making process and develop their representative role.
- 7.3 Issues may affect a single ward, but where they have a wider impact, a number of local Members will need to be kept informed.
- 7.4 Whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the wards affected should be invited to attend the meeting as a matter of course.
- 7.5 If a local Member intends to arrange a public meeting on a matter concerning some aspect of the Council's work, he/she should inform the relevant officer.
  - (a) an officer may attend but is not obliged to do so, and

(b) the meeting may be held in the Council owned premises.

- 7.6 No such meetings should be arranged or held in the immediate run up to Council elections.
- 7.7 A member of staff will not attend a public meeting arranged by Member(s) on a party political basis.
- 7.8 Officers will not normally accompany Members to ward surgeries. However, if they do so:
- (a) the surgeries must be open to the general public and
  - (b) staff should not be requested to accompany Members to surgeries held in the offices or premises of political parties.
- 7.9 Staff must never be asked to attend Ward or constituency political party meetings.

## 8. **Correspondence**

- 8.1 Correspondence between an individual Member and an officer should not be copied to another Member unless the author expressly intends and states that this is the case or consents. Where correspondence is copied, this should always be made explicit and there should be no 'blind' copies.
- 8.2 Official letters written on behalf of the Council should normally be in the name of the relevant officer.
- 8.3 The Mayor and the Leader may initiate correspondence in his/her own name.
- 8.4 Letters which create legally enforceable obligations or which give instructions on behalf of the Council should never be sent in the name of a Member.
- 8.5 When writing in an individual capacity as a Ward Member, a member must make clear that fact.
- 8.6 Correspondence between Members and staff should reflect the mutual trust and respect which is essential to the relationship

## 9. **Media relations**

- 9.1 All formal relations with the media must be conducted in accordance with the Council's agreed Communications Protocol and the law on local authority publicity.
- 9.2 Press releases or statements made by the communications team must promote or give information on Council policy or services. They will be factual and consistent with Council policy. They cannot be used to promote a party group.
- 9.3 Staff will keep relevant members informed of media interest in the Council's activities, especially regarding strategic or contentious matters.
- 9.4 Only the communications team is authorised to respond to enquiries from the media.

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- 9.5 Likewise, staff will inform the Council's communications team of issues likely to be of media interest, since that team should be the media's only point of contact.
- 9.6 If a Member is contacted by or contacts the media on an issue, he/she should:
- (a) indicate in what capacity he/she is speaking (e.g. in a personal capacity or on behalf of a party group).
  - (b) only designated spokespeople should speak on behalf of the Council and only on issues within their remit.
  - (c) Ward members should not normally speak on behalf of the Council, except if there is an emergency that affects their ward. If there are ward members from different political parties in the same ward, a joint statement should be issued.
  - (d) if necessary, and always when he/she would like a press release to be issued, seek assistance from the Council's communications team and/or relevant senior officer; except in relation to a statement which is party political in nature;
  - (e) consider the likely consequences for the Council of his/her statement.
  - (f) never give a commitment in relation to matters which may be subject to claims from third parties and/or are likely to be an insurance matter;
  - (g) consider whether to consult other relevant Members; and
  - (h) take particular care in what he/she says in the run-up to local or national elections to avoid giving the impression of electioneering, unless he/she has been contacted as an election candidate or political party activist.
10. **Members of committees or sub committees**
- 10.1 Senior staff (including the Chief Executive, the Monitoring Officer and the Chief Finance Officer) have the right to present reports and give advice to committees and sub-committees.
- 10.2 Members of a committee or sub-committee shall take decisions within the remit of that committee or sub-committee's Terms of Reference, and will not otherwise instruct staff to act.
11. **Overview and Scrutiny Members and staff**
- 11.1 The Overview and Scrutiny function is about reviewing the policies and performance of the Council and its services and the committee may require staff to attend scrutiny meetings for this purpose. However Members should not normally expect junior staff to give evidence and all requests for attendance of staff should be made to senior staff in the first instance.



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- 11.2 Staff should be prepared to justify advice given to the Council, its committees and sub-committees.
- 11.3 Staff must also be prepared to justify decisions they have taken under delegated powers.
- 11.4 In giving evidence, staff must not be asked to give their political views.
- 11.5 Members should not question staff in a way which could be interpreted as harassment. Neither should they ask about matters of a disciplinary nature.
- 11.6 Questioning the capability, competence or appraising the personal performance of staff does not come within the Overview and Scrutiny function.
12. **Party groups and staff**
- 12.1 Senior staff may properly be asked to contribute to deliberations of matters concerning Council business by party groups.
- 12.2 Staff have the right to refuse such requests, and will normally not attend a meeting of a party group, where some of those attending the meeting are not Members of the Council.
- 12.3 Staff support will not extend beyond providing factual information or professional advice in relation to matters of party business and therefore should not be expected to be present at meetings or parts of meetings when such matters are to be discussed.
- 12.4 Party group meetings are not empowered to make decisions on behalf of the Council, and conclusions reached at such meetings do not rank as formal decisions. The presence of a member of staff confers no formal status on such meetings in terms of Council business and cannot be interpreted as doing so.
- 12.5 Where staff provide factual information and advice to a party group in relation to a matter of Council business, this is not a substitute for providing all the necessary information and advice when the matter in question is formally considered at the relevant meeting of the Council, its committees or sub-committees.
- 12.6 Staff will respect the confidentiality of any party group discussions at which they are present and, unless requested to do so by that party group will not relay the content of such discussions to another party group or to any other Members. This shall not prevent an officer providing feedback to other senior staff on a need-to-know basis.
- 12.7 In their dealings with party groups, staff must treat each group in a fair and even-handed manner.
- 12.8 Members must not do anything which compromises or is likely to compromise staff impartiality.
- 12.9 The duration of an officer's attendance at a party group meeting will be at the discretion of the group, but an officer may leave if at any time he/she feels it is no longer appropriate to be there.

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- 12.10 An officer who is not a senior officer shall not be invited to attend a party group meeting, but a senior officer may nominate another officer to attend on his/her behalf.
- 12.11 An officer should be given the opportunity of verifying comments and advice attributed to him/her in any written record of a party group meeting.
- 12.12 No Member will refer in public or at meetings of the Council to advice or information given by staff to a party group meeting.
- 12.13 At party group meetings where some of those present are not Members of the Council, care must be taken not to divulge confidential information relating to Council business. Persons who are not Members are not bound by the Members' Code of Conduct and they do not have the same rights to council information as Members.
- 12.14 Any particular cases of difficulty or uncertainty in relation to this part of the protocol should be raised with the Chief Executive and the relevant party group leader.
13. **Member enquiries**
- 13.1 Planning applications/planning enforcement enquiries should normally be directed in the first instance to the case officer who will normally reply by email or telephone within five working days. Should the matter be of a particularly sensitive or complex nature the enquiry should be directed to the relevant team leader or manager. Members are encouraged to check the planning section of the Council's website prior to contacting staff when seeking information on live planning applications.
- 13.2 Matters under active consideration by a Council body – enquiries should be directed to the author of the relevant report.
- 13.3 General enquiries should be directed to [memberscasework@brentwood.gov.uk](mailto:memberscasework@brentwood.gov.uk)
14. **Members access to documents and information**
- 14.1 This is dealt with in Part 4.2 of the Constitution.
15. **Confidentiality**
- 15.1 Members and staff must not disclose information given to them in confidence without the consent of a person authorised to give it, or unless required by law to do so.
- 15.2 When requested to do so, staff will keep confidential from other Members advice requested by a Member.
16. **Use of Council resources**
- 16.1 The Council provides all members with services such as printing and photocopying, and goods such as stationary and computer equipment, to assist them in discharging their roles as Members of the Council. These goods and services are paid for from the public purse and they should not be used for private purposes or in connection with party political or campaigning activities.
- 16.2 Members should ensure they understand and comply with the Council's own rules about the use of such resources, particularly:

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- (a) where facilities are provided in Members' homes at the Council's expense;
  - (b) regarding ICT security
- 16.3 Members should not put pressure on employees to provide resources or support which staff are not permitted to give. Examples are:
- (a) business which is solely to do with a political party;
  - (b) work in connection with a ward or constituency party political meeting;
  - (c) electioneering
  - (d) work associated with an event attended by a Member in a capacity other than as a Member of the Council;
  - (e) private personal correspondence;
  - (f) work in connection with another body or organisation where a Member's involvement is other than as a Member of the Council; and
  - (g) support to a Member in his/her capacity as a councillor of another local authority.
17. **Interpretation, complaints and allegations of breaches**
- 17.1 Members or staff with questions about the implementation or interpretation of any parts of this protocol should seek the guidance of the Monitoring Officer.
- 17.2 A Member who is unhappy about the actions taken by, or conduct of an officer should:
- (a) avoid personal attacks on, or abuse of, the officer at all times,
  - (b) ensure that any criticism is well founded and constructive,
  - (c) ensure that any criticism is made in private
  - (d) take up the concern with the appropriate Chief Executive
- 17.3 A serious breach of this protocol by an officer may lead to an investigation under the Council's disciplinary procedure.
- 17.4 An officer who believes a member may have acted other than in accordance with this protocol should raise his/her concern with the Chief Executive who may refer the matter to the Monitoring Officer. He/she will consider how the complaint or allegation should be dealt with. At a minor level, this may be no more than informally referring the matter to the leader of the relevant party group. More serious complaints may involve alleged breaches of the Members' Code of Conduct.

## **PART 5.5 - PROTOCOLS FOR LICENSING COMMITTEE**

### Introduction

Under the Local Government Act 1972 the Council is required to establish committees to undertake non-executive/statutory functions under powers delegated from full Council. Licensing is a statutory function.

As required under ~~S6~~ [section 6](#) (1) Licensing Act 2003, the Council has delegated its licensing functions to the Licensing Committee. In addition the licensing committee has been delegated responsibility for undertaking all other licensing functions. Some functions, such as agreement of policy and fees, will remain with licensing committee, although the committee has delegated a number of its functions to officers

The Licensing Committee has delegated to Sub-Committees of the Licensing Committee authority to hear and determine applications that may arise in a variety of circumstances under the Licensing Act 2003, the Gambling Act 2005 and a variety of other functions, such as Taxi Licensing and Market Trading. Meetings of Sub-Committees are referred to in these Procedure Rules as Hearings.

Sub-Committee meetings in relation to Licensing Act 2003 matters will comply at all times with The Licensing Act 2003 (Hearings) Regulations 2005 ("the Hearings Regulations"). Sub-Committee meetings in relation to Gambling Act 2005 matters will comply with The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees)(Premises Licences and Provisional Statements)(England and Wales) Regulations 2007 ("the Proceedings Regulations").

Brentwood Borough Council as the licensing authority wishes to ensure that all parties receive a fair hearing. The purpose of the Committee hearing is to enable an open and transparent process of determination of applications and to allow relevant parties to express their views.

#### **1. Application of the Meetings General Procedure Rules**

The Council Procedure Rules shall apply to all meetings of the Licensing Committee and Licensing Sub-Committees except where otherwise determined by statute, which will take precedence over the constitution.

Hearings will take the form of a structured discussion, led by the Members of the Committee. All parties will be given opportunity to make a statement.

#### **2. Composition of the Licensing Committee**

2.1 The Licensing Committee sitting in determination of policy and procedural matters, including the setting of fees and charges shall comprise of fifteen (15) Councillors all of whom have undertaken suitable training in accordance with the criteria set out in paragraph (6) below.

2.2 The composition of the Licensing Committee shall reflect the balance of the various political groups having seats on full Council. Whilst this is not a legal requirement it is considered to be good practice especially in lieu of the fact that under provision of ~~S7~~ [section 7](#) (5) Licensing Act 2003, the Council may arrange for the discharge of other functions by the Licensing Committee. Such other functions may be of a nature where political balance would usually be required.

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The quorum for the Licensing Committee shall be four Members which must be maintained for the duration of the meeting.

3. **Composition of Licensing Sub Committees**

- 3.1 Licensing Sub-Committees will be established to consider Licensing Act 2003 and Gambling Act 2005 applications and reviews in respect of both premises and individuals and shall comprise of three Councillors drawn from the main Licensing Committee.

The quorum for Licensing Sub-Committees shall be three Members which must be maintained for the duration of the Hearing.

- 3.2 Licensing Sub-Committees, when meeting to hear and determine hackney carriage and private hire vehicle, driver or operator appeals and applications shall comprise of three Councillors.

The quorum for the Licensing sub-committee when determining hackney carriage and private hire appeals shall be three Members which must be maintained for the duration of the meeting.

- 3.3 No Member of the Licensing Committee shall be eligible to be a member of a Licensing Sub-Committee which is determining an application based in the Ward which that Councillor represents.

4. **Member Training**

- 4.1 No Member may sit on any Licensing Committee or Licensing Sub-Committee unless they have first received full training in accordance with the terms as laid out below.

The following criteria shall apply in respect of training:

- (a) Attendance must be at the training session provided within the context of the Members' training programme;
- (b) Attendance must be for the duration of each training session
- (c) Members' who have received full training must attend refresher training at least every three years ;

- 4.2 Training sessions may be conducted either 'in House' or externally and must cover the following:

- (a) The roles and responsibilities of the Licensing Committee with regard to policy, administration and fee setting of the various licensing functions;
- (b) Conduct of Committee meeting and Members' attending such meeting;
- (c) The roles and responsibilities of Licensing Sub-Committees in hearing cases relating to the grant, continuance, review, variation, transfer etc of licenses;
- (d) Conduct of Licensing Sub-Committee hearings and the Members' in attendance at such hearings

- (e) General requirements of a quasi-judicial function, including such matters as convention rights, matters that may/may not be considered, evidential requirements, recording of relevant information and rights of appeal

5. **Licensing Committee meetings and Sub-Committee Hearings – when and where?**

- 5.1 Meetings may be called from time to time as and when appropriate. The Licensing Committee and Licensing Sub-Committees shall meet at the Town Hall, Ingrave Road, Brentwood or another location to be agreed by the Chair of the Licensing Committee.
- 5.2 Meetings of the Licensing Committee shall be arranged by normally giving a minimum of five clear working days' notice and will comply with the Access to Information Rules set out in the Council Constitution.
- 5.3 Licensing Sub-Committee Hearings may be called as and when required and shall conform to the requirements as laid down in the relevant regulations namely The Licensing Act 2003 (Hearings) Regulations 2005 and the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees)(Premises Licences and Provisional Statements)(England and Wales) Regulations 2007 (“the Proceedings Regulations”). The current notice period for most hearings is 10 clear working days although some, such as Temporary Event Notices are less as determined by legislation.
- 5.4 There may be the need to convene more than one Licensing Sub-Committee on a particular day depending on the amount or urgency of business to be transacted.
- 5.5 Hearings shall be arranged by the Proper Officer in accordance with the appropriate statutory notice periods as prescribed by the above Regulations.

6. **Public or private meetings of the Licensing Committee and Licensing Sub Committees?**

- 6.1 Meetings of the Licensing Committee will be held in public except in so far as the matters for decision relate to issues which can be dealt with in private in accordance with the Access to Information Rules set out in the Council Constitution.
- 6.2 Licensing Sub-Committee Hearings will be held in public except that the Sub-Committee may decide to exclude the public from all or part of its proceedings if it is in the public interest in accordance with the Hearings Regulations and Proceedings Regulations (as appropriate).

7. **Voting**

- 7.1 All Members of the Licensing Committee and Licensing Sub-Committees are entitled to vote.

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**HOW ARE LICENSING COMMITTEE AND LICENSING SUB-COMMITTEE HEARINGS CONDUCTED?****8. Who presides?**

- 8.1 Licensing Committee meetings will be chaired by a Member who shall be appointed by the committee on an annual basis. In the absence of the Chair the Members present may appoint a Chair for the meeting from those present.
- 8.2 Licensing Sub-Committee Hearings will be chaired by a Member who shall be appointed from those Members present at the Hearing.

**9. Who may attend Licensing Committee and Licensing sub-committee? Hearings?**

- 9.1 Members of the public may attend meetings of the Licensing Committee except:
- (a) When they are in closed session in their ~~quasi-judicial~~ regulatory capacity to consider any evidence for the purpose of formulating a decision.
  - (b) when exempt confidential information is being considered where the press and public, may be excluded by resolution of the Committee in accordance with the Access to Information Rules contained in the Council Constitution or where it is in the public interest in accordance with the Hearings Regulations or the Proceedings Regulations (as appropriate)
- 9.2 Members of the public may attend Licensing Sub-Committee Hearings except:
- (a) they may not address the Sub-Committee unless they have previously submitted a valid representation; or
  - (b) the public (including a party and any person assisting or representing a party) may be excluded from all or part of a Hearing where the Sub-Committee considers that the public interest in doing so outweighs the public interest in the Hearing, or that part of the Hearing, taking place in public.

**10. What business?**

- 10.1 Meetings of the Licensing Committee will include the following business:
- (a) Consideration of the minutes of the last meeting;
  - (b) Urgent Items;
  - (c) Declarations of interest, if any;
  - (d) Consideration of any matter within the Committee's Terms of Reference.

**11. Recording of Decisions of the Licensing Committee**

- 11.1 All decisions will be made by a simple majority of the Members of the Committee present at the meeting.

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11.2 Following a meeting of the committee at which a report (whether oral or in writing) has been received and a recommendation has been made, the appropriate Officer shall ensure that a written statement is kept which must include the following:-

- (a) record of the decision;
- (b) record of reasons for the decision;
- (c) record of any conflict of interest declared; and
- (d) any dispensation granted by the Monitoring Officer, where appropriate.

12. **Licensing Sub-Committee Hearing Determinations**

12.1 All determinations shall be made in accordance with the Hearings Regulations and the Proceedings Regulations (as appropriate) and the appropriate Officer shall ensure that a permanent record of the Hearing shall be taken.

12.2 Where a Hearing is in relation to:-

- (a) counter notice following police objection to a temporary event notice;
- (b) review of a premises licence following closure order;

the sub-committee will make its determination at the conclusion of the Hearing.

12.3 For other Hearings the sub-committee will make its determination within the period of five working days beginning with the day or the last day on which the Hearing was held. This does not however preclude the right for determination to be made at the conclusion of the hearing.

12.4 Notification of the sub-committee's determination shall be given in accordance with the Hearings Regulations or the Proceedings Regulations (as appropriate).

13. **Procedure for the determination of licence applications**

13.1 The Licensing Act 2003 and the Hearings Regulations and the Gambling Act 2005 and the Proceedings Regulations provide that the Council as Licensing Authority may determine its own procedures to be followed at a Hearing. Sub-Committee Hearings are required to observe the rules of natural justice and the parties are entitled to a fair hearing under the Human Rights Act 1998. The Licensing Authority is required to explain to the parties the procedure which it proposes to follow at the hearing. The Licensing Authority will permit the parties to have an equal maximum period of time in which to exercise their rights to:

- give further information and call any witness in support of their application, representations or notice (as applicable);
- question any other party or witness
- address the sub-committee

13.2 Those present at a Hearing under the Licensing Act 2003 may be the Applicant, any person representing or supporting the Applicant, plus any witnesses; the Council's Licensing Officer, representatives from Responsible Authorities and their witnesses; objectors to the application, a Legal Advisor and Committee Administrator for the



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Council. In addition members of the public and press may attend but not address the sub-committee.

- 13.3 Those present at a Hearing under the Gambling Act 2005 may be the Applicant, any person representing or supporting the Applicant, plus any witnesses; the Council's Licensing Officer, representatives from Responsible Authorities and their witnesses; objectors to the application, Ward Councillors who have submitted representations (in accordance with the Proceedings Regulations in writing beforehand; a Legal Advisor and Committee Administrator for the Council. In addition Members of the public and press may attend but not address the sub-committee.
- 13.4 Meetings of the Licensing Committee will normally be held in public unless it decides to exclude the public and the press from all or part of the proceedings by resolution of the committee in accordance with the Access to Information Rules contained in Part 4 of this Constitution. If any other Councillors are present who are not Members of the committee they must withdraw as well.
- 13.5 Licensing Sub-Committees will follow the procedure set out in Schedule A when hearing and determining Licensing Act 2003 applications.
- 13.6 Licensing Sub-Committees will follow the procedure set out in Schedule B when hearing and determining Gambling Act 2005 applications.
- 13.7 The Licensing Sub-Committee will follow the procedure set out in Schedule C when determining sex establishment and sexual entertainment venue applications
- 13.8 The Licensing Sub-Committee will follow the procedure set out in Schedule D when hearing hackney carriage and private hire applications and appeals.
- 13.9 In all cases, the committee will allow parties an equal period of time, if they so wish, to make representation, give supporting information or to ask questions. The Chair of the Committee will be able to determine the maximum period of time available to the parties.
- 13.10 Any party may be represented by another person(s) whether that person be legally qualified or not.
- 13.11 Legal advice to the Committee will either be given in open session or, where given to Members when they have withdrawn to make their decision, will be repeated afterwards in open session to those in attendance.
- 13.12 Where multiple representations have been received from individual members of the public, they could encourage such groups to nominate a spokesperson to make oral submissions on behalf of the group. All valid representations will still be taken into account regardless of whether an individual speaks in person. This does not remove the right of any individual to speak should they desire to do so provided that they have submitted a valid representation within the consultation period.
- 13.13 The committee may take into account, documentary or other information produced by a party in support of their application, representation or notice either before the hearing or, with the consent of other parties (or at the discretion of the Chair), at the hearing.

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- 13.14 Representations are restricted in the case of matters heard under provision of the Licensing Act 2003, to one or more of the four licensing objectives. In the case of the Gambling Act 2005 matters are restricted to the concerns in relation to the codes of practice and guidance issued by the home office and to the three licensing objectives. In all other licensing regimes any reasonable and relevant matters may be considered when making determination.
- 13.15 Hearsay evidence is admissible although the committee may determine that such evidence should be given less weight than that of a first –hand testimony.

14. **Licensing Sub-Committee General Powers**

- 14.1 Any time limit provided for in the Hearings Regulations or the Proceedings Regulations may be extended for a specified period where the Licensing Authority or a sub-committee considers this to be necessary in the public interest. In this instance notice to all parties will be given forthwith.
- 14.2 A sub-committee may adjourn a Hearing to a specified date or arrange for a Hearing to be held on specified additional dates where it considers this necessary for its consideration of any representations or notice made by a party. The sub-committee must give notice forthwith of its decision to all parties of the date, time and place to which the Hearing has been adjourned or the additional date at which the Hearing is to be held. Provided that a sub-committee shall not exercise the powers referred to in paragraphs (1) and (2) above where the effect would be that an application would fail to reach a determination on a review under section 167 of the Licensing Act 2003 (review of premises licence following closure order) within the 28 day period specified in subsection (3) of that section or the determination of an application or a review under sections 162(1) or 201(4) of the Gambling Act 2005.

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**Schedule A****Licensing Sub-Committee Hearing Procedure for Hearings under the Licensing Act 2003**

1. All questions and statements will be directed through the Chair.
2. The Chair will at the beginning of the Hearing explain to the parties the procedure to be followed and shall consider any request made by a party for permission for another person to appear at the Hearing.
3. The Hearing shall take the form of a discussion led by the Council's representative.
4. Cross examination shall not be permitted unless the sub-committee considers that cross-examination is required for it to consider the representations, application or notice as the case may be.
5. The Chair of the sub-c may require any person attending the Hearing who in his opinion is behaving in a disruptive manner to leave the Hearing and may:
  - (a) refuse to permit that person to return, or
  - (b) permit him to return only on such conditions as the sub-committee may specify.

Provided that any such person may before the end of Hearing submit to the Council in writing any information which they would have been entitled to give orally had they not been required to leave.

6. A party who wishes to withdraw any representations they have made may do so:
  - (a) by giving notice to the Council no later than 24 hours before the day or first day on which the Hearing is to be held, or
  - (b) orally at the hearing
7. The sub-committee in considering any representations or notice made by a party may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the Hearing, or with the consent of all other parties, at the Hearing.
8. The sub-committee shall disregard any information given by a party or any person to whom permission to appear at the Hearing had been given which is not relevant to:
  - (a) their application, representations or notice(as applicable) or in the case of another person, the application representations or notice of the party representing their appearance, and
  - (b) the promotion of the licensing objectives or, in relation to a Hearing to consider a notice given by a chief officer of police, the crime prevention objective.
9. If a party has informed the Council that he does not intend to attend or be represented at a Hearing, the sub-committee may decide to proceed with the Hearing in his absence.

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10. If a party has not informed the Council that he does not intend to attend or be represented at a Hearing and fails to attend or be represented at a Hearing, the sub-committee may:

- (a) where it considers it to be necessary in the public interest adjourn the Hearing to a specified date ( notice being given forthwith to the parties concerned of the date, time and place to which the Hearing has been adjourned), or
- (b) hold the hearing in his absence

Where the sub-committee agrees to hold the Hearing in the absence of a party, the sub-committee shall consider at the Hearing the application, representations or notice made by that party.

The Council's case:-

11. The Chair will invite the Council's representative to summarise the report relating to the application under consideration.

The Applicant's case:-

- 12. The Applicant and/or representative will begin with their opening remarks and present their case.
- 13. The Applicant's witnesses (if any) will give evidence in support of the Applicant's case.
- 14. The Applicant and/or representative may question the Applicant's witness again to clarify any points which may have arisen.

Submissions from other persons or their representatives and from Responsible Authorities:-

- 15. Each party will present their case.
- 16. Each party's witnesses (if any) will give evidence in support of the party's case.
- 17. Each party and their witnesses may be questioned by the Chair and Members of the sub-committee.
- 18. Each party may question their witness again to clarify any points which may have arisen.
- 19. If the Applicant or other parties wish to question each other, questions may be directed through the Chair.
- 20. Closing Statements may be made by the Applicant and/or representative.
- 21. The Chair will ask the Legal Advisor whether there is anything else to be raised or settled before the proceedings are closed.

Determination of the application by the sub-committee

22. The sub-committee will always discuss their decision in closed session. The preferred method is that they will retire to a separate venue/room and they may be joined by the democratic services officer (for the purpose of recording proceedings) and by the legal

representative (for the purpose of giving advice on points of law). In some cases the applicant and/or their representative, other persons, Responsible Authorities and the Members of the public and the press may be asked to leave the room to allow the sub-committee to determine the application. During this process the sub-committee Members may ask for legal advice from the Legal Advisor.

23. Once a decision is reached all parties will reconvene in public and the sub-committee's determination will be announced. Any legal advice given will be made public either verbally upon delivery of the decision or in writing soon after the hearing. In any event, written details of the determination and the grounds upon which it is based will be sent to all parties concerned in accordance with the Hearings Regulations.

**Schedule B****Licensing sub-committee Hearing Procedure for Hearings under the Gambling Act 2005**

1. The Hearing shall take place in public unless the sub-committee is satisfied, having regard to all the circumstances of the case, that it is necessary to hold all or part of the hearing in private. The sub-committee shall have regard to any unfairness to a party that is likely to result from holding the Hearing in public and the need to protect as far as possible the commercial or other legitimate interests of a party.
2. All questions and statements will be directed through the Chair.
3. The Chair will at the beginning of the Hearing explain to the parties the procedure to be followed and shall consider any request made by a party for permission for another person to appear at the Hearing.
4. The Hearing shall take the form of a discussion led by the Council's representative.
5. Cross examination shall not be permitted unless the sub-committee considers that cross-examination is required for it to consider the representations, application or notice as the case may be.

**Exclusion of Disruptive Persons**

6. The Chair of the sub-committee may require any person attending the Hearing who in his opinion is behaving in a disruptive manner to leave the Hearing and may:
  - (a) refuse to permit that person to return, or
  - (b) permit him to return only on such conditions as the sub-committee may specify.

Provided that any such person may before the end of Hearing submit to the Council in writing any information which they would have been entitled to give orally had they not been required to leave.

**Failure of Parties to attend the Hearing**

7. The sub-committee may proceed with a Hearing in the absence of a party or party's representative if the party has-
  - (a) informed the Council that they do not intend to attend or be represented at the Hearing (and has not subsequently advised the Council otherwise);
  - (b) failed to inform the Council whether they intend to attend or be represented at the hearing;
  - (c) left the Hearing in circumstances enabling the sub-committee reasonably to conclude that they do not intend to participate further.
8. If a party has informed the Council that they intend to attend or be represented but fail to attend or be so represented, the sub-committee may:

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- (a) adjourn the hearing to a specified date if it considers it to be in the public interest, or
- (b) proceed with the Hearing in the absence of that party.

Where the Hearing is adjourned notice shall be given forthwith to the parties concerned of the date, time and place to which the Hearing has been adjourned.

9. Where the hearing proceeds in the absence of a party, the sub-committee shall consider at the Hearing the application or representations made by that party.

The Council's case:-

10. The Chair will invite the Council's representative to summarise the report relating to the application under consideration.

The Applicant's case:-

11. The Applicant and/or representative will begin with their opening remarks and present their case.
12. The Applicant's witnesses (if any) will give evidence in support of the Applicant's case.
13. The Applicant and/or representative may question the Applicant's witness again to clarify any points which may have arisen.

Submissions from other parties (these will include interested parties, Ward Councillors (who are an interested party themselves or are acting in the capacity as a representative of an interested party) and representatives from responsible authorities:-

14. Each party will present their case.
15. Each party's witnesses (if any) will give evidence in support of the party's case.
16. Each party and their witnesses may be questioned by the Chair and Members of the sub-committee.
17. Each party may question their witness again to clarify any points which may have arisen.
18. If the Applicant or the interested parties wish to question each other, questions may be directed through the Chair.
19. Closing Statements may be made by the Applicant and/or representative.
20. The Chair will ask the Legal Advisor whether there is anything else to be raised or settled before the proceedings are closed.

Determination of the application by the Sub-Committee

21. The sub-committee will always discuss their decision in closed session. The preferred method is that they will retire to a separate venue/room and they may be

joined by the democratic services officer (for the purpose of recording proceedings) and by the legal representative (for the purpose of giving advice on points of law). In some cases the applicant and/or their representative, other persons, Responsible Authorities and the Members of the public and the press may be asked to leave the room to allow the sub-committee to determine the application. During this process the sub-committee Members may ask for legal advice from the Legal Advisor.

22. Once a decision is reached all parties will reconvene in public and the sub-committee's determination will be announced. Any legal advice given will be made public either verbally upon delivery of the decision or in writing soon after the hearing. In any event, written details of the determination and the grounds upon which it is based will be sent to all parties concerned in accordance with the Hearings Regulations.



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**Schedule C****Licensing Committee Procedure relating to Sex Establishment Licences made under the Local Government (Miscellaneous Provisions Act 1982)**

1. All questions and statements will be directed through the Chair.
2. The Chair will make opening remarks which introduce those present and ensuring that all those present understand the procedure.
3. The Chair will invite the Council's Licensing Officer to summarise the report relating to the application under consideration.

**The Applicant's case:-**

4. The Applicant and/or representative will begin with their opening remarks and present their case.
5. The Applicant's witnesses (if any) will give evidence in support of the Applicant's case.
6. The Applicant and/or representative may question the Applicant's witness again to clarify any points which may have arisen.

**Submissions from Objectors (including Councillors who have made written objections to the Council stating in general terms the grounds of their objection to the grant, renewal or transfer of the licence not later than 28 days after the date of the application).**

The Applicant and/or representative may address the committee on a point that arisen on their case following the submissions by the Objectors.

7. The Applicant and their witnesses and the Objectors may be questioned by the Chair and Members of the committee.
8. Each party may question their witness again to clarify any points which may have arisen.
9. If the Applicant or the objectors wish to question each other, questions may be directed through the Chair.
10. Closing Statements may be made by the Applicant and/or representative.
11. The Chair will ask the Legal Advisor whether there is anything else to be raised or settled before the proceedings are closed.

**Determination of the application by the Committee**

12. The committee will always discuss their decision in closed session. The preferred method is that they will retire to a separate venue/room and they may be joined by the democratic services officer (for the purpose of recording proceedings) and by the legal representative (for the purpose of giving advice on points of law). In some cases the applicant and/or their representative, other persons, Responsible Authorities and the Members of the public and the press may be asked to leave the

room to allow the committee to determine the application. During this process the Committee Members may ask for legal advice from the Legal Advisor.

13. Once a decision is reached all parties will reconvene in public and the committee's determination will be announced. Any legal advice given will be made public either verbally upon delivery of the decision or in writing soon after the hearing. In any event, written details of the determination and the grounds upon which it is based will be sent to all parties concerned in accordance with the Hearings Regulations.

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**Schedule D****Licensing Committee Procedure relating to Hackney Carriage Licences and Private Hire Vehicle Licences made under the Local Government (Miscellaneous Provisions) Acts.**

1. All questions and statements will be directed through the Chair.
2. The Chair will make opening remarks which introduce those present and ensuring that all those present understand the procedure.

**The Council's case:-**

3. The Council's representative will begin with their opening remarks and present their case.
4. The Council's witnesses (if any) will give evidence in support of the Council's case.
5. The Council's representative and/or representative may question the Council's witness again to clarify any points which may have arisen.

**Submission from the Applicant:-**

6. The Applicant and/or representative will begin with their opening remarks and present their case.
7. The Applicant's witnesses (if any) will give evidence in support of the Applicant's case.
8. The Applicant and/or representative may question the Applicant's witness again to clarify any points which may have arisen.

**Submissions from any other witnesses/parties:-**

9. Each party and their witnesses will present their case and may be questioned by the Chair and Members of the committee.
10. Each party may question their witness again to clarify any points which may have arisen.
11. If the Applicant or the objectors wish to question each other, questions may be directed through the Chair.
12. Closing Statements may be made by the Council and/or representative.
13. The Chair will ask the Legal Advisor whether there is anything else to be raised or settled before the proceedings are closed.

**Determination of the application by the Committee**

14. The sub-committee will always discuss their decision in closed session. The preferred method is that they will retire to a separate venue/room and they may be joined by the democratic services officer (for the purpose of recording proceedings) and by the legal representative (for the purpose of giving advice on points of law).

In some cases the applicant and/or their representative, other persons, Responsible Authorities and the Members of the public and the press may be asked to leave the room to allow the sub-committee to determine the application. During this process the sub-committee Members may ask for legal advice from the Legal Advisor.

15. Once a decision is reached all parties will reconvene in public and the sub-committee's determination will be announced. Any legal advice given will be made public either verbally upon delivery of the decision or in writing soon after the hearing. In any event, written details of the determination and the grounds upon which it is based will be sent to all parties concerned in accordance with the Hearings Regulations.

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## PART 5.6 - POLITICALLY RESTRICTED POSTS

### 1. Introduction

- 1.1 This guidance applies to employees who occupy or are appointed to politically restricted posts and sets out the application process for exemption from or inclusion on the list of politically restricted posts maintained by the Council, and the process of appeal for a direction on whether a post is politically sensitive.
- 1.2 The main provisions regarding politically restricted posts are set out in Part I of the Local Government and Housing Act 1989 (the LGHA 1989) as amended by the Local Democracy, Economic Development and Construction Act 2009. The law aims at ensuring the political impartiality of local government staff.
- 1.3 Posts will only be considered to be politically restricted if they fall into the following two broad categories:
  - Specified Posts
  - Sensitive Posts

#### Specified Posts

- 1.4 Specified posts are automatically subject to restrictions on public political activity and as such, there is no right of appeal.

These posts are listed as follows:

- The Head of Paid Service
- The statutory Chief Officers
- Non-statutory Chief Officers
- Deputy Chief Officers
- The Monitoring Officer
- The Chief Finance Officer
- Officers exercising delegated powers, i.e. persons whose posts are for the time being specified by the Council in a list maintained in accordance with S100G(2) of the Local Government Act 1972
- Assistants to political groups

#### Sensitive Posts

- 1.5 A sensitive post is one which meets one or both of the following duties-related criteria:
  - giving advice on a regular basis to the authority itself, to any committee or sub-committee of the authority or to any joint committee on which the authority are represented; or where the authority are operating executive arrangements, to the executive of the authority; or any committee of that executive; or to any member of that executive who is also a member of the authority; and / or
  - speaking on behalf of the authority on a regular basis to journalists or broadcasters.
- 1.6 The effect of including a Council employee on the list of politically restricted posts debars that individual from having any active political role either in or outside the workplace, in particular:

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- (a) standing for candidature for public elected office, unless the employee resigns prior to announcing his/her candidature in accordance with paragraph 4 below;
  - (b) acting as an election agent or sub-agent for any candidate for election;
  - (c) holding office in a political party;
  - (d) canvassing at elections (not restricted to Brentwood Council);
  - (e) speaking or writing publicly (other than in an official capacity) with the intention of affecting public support for a political party (does not include the display of a poster or other document at the postholder's home or in their car or other personal possessions)
- 1.7 The cumulative effect of these restrictions is to limit the incumbents of politically restricted posts to bare membership of political parties, with no active participation within the party permitted.
2. **Categories of politically restricted posts requiring political neutrality**
- 2.1 The Council is required to maintain an up to date list of its politically restricted posts which fall into the following categories. The list is open to public inspection:
- (a) posts individually identified in the legislation, either by name or by their relationship to other senior officers;
  - (b) posts where the duties of the post include giving advice on a regular basis to the authority themselves, to the executive, to any committee or sub-committee of the Council or any joint committee on which the Council is represented and/or speaking on behalf of the Council on a regular basis to journalists or broadcasters;
  - (c) posts to which duties have been delegated under the Scheme of Delegations to Officers.
- 2.2 In practical terms, the best way for the Council to maintain clarity in respect of politically restricted posts is to annotate a full staff list to show those posts restricted. The benefit of a list of this type is that it greatly facilitates the role of Head of Paid Service in the adjudication process.
- 2.3 Secretarial, clerical and support staff, even if they report to the Chief Executive or to Directors, are not regarded as Chief or deputy Chief Officers for the purposes of political restriction. They may however, be deemed to be in politically restricted posts if their duties fall within the definition referred to in the table at paragraph 2.4 below.

**Specified Posts:** These are listed below:

<b>Description of post in the Local Government and Housing Act 1989</b>	<b>Council's Designated Post</b>
The Head of Paid Service	Chief Executive
Monitoring Officer	Monitoring Officer or Head of Legal
Chief Finance Officer (Section 151 Officer)	Director of Strategy & Corporate Services
Statutory Chief Officers	None
Non-Statutory Chief Officers (a) an employee for whom the Head of Paid Service is directly responsible (b) an employee who, as regards all or most of his/her duties, reports directly to, or is directly accountable to, the Head of Paid Service and/or the Council, or any committee or sub-committee of the Council	Head of Borough Health, Safety & Localism Head of Customer Services Head of Planning and Development Head of Housing Head of Street Scene
Deputy Chief Officers An employee who, as regards all or most of his/her duties, reports directly to, or is directly accountable to, one or more of statutory officers or non-statutory officers	Any such posts will be recorded on the list of politically restricted posts held by the Council
Posts with functions delegated to them under the Scheme of Delegation to Officers	Posts with functions delegated to them under the Scheme of Delegation to Officers set out in the Constitution.

- 2.4 Posts set out in the following table must be recorded on the list of politically restricted posts and the post holder may apply for exemption from political restriction if they can demonstrate that the criteria set out in the table do not apply to their posts.

**Sensitive posts:**

<b>Description of post in the Local Government and Housing Act 1989</b>	<b>Council's Designated Post</b>
Posts whose duties include giving advice on a regular basis to the authority themselves, to the executive to any committee of that executive, or to any member of that executive who is also a member of the authority, to any committee or sub-committee of the authority or any joint committee on which the authority is represented and/or speaking on behalf of the authority on a regular basis to journalists or broadcasters.	Posts whose duties include giving advice on a regular basis to the Council, to the Leader or any spokespersons, to any committee or sub-committee of the Council, to any local committee or any joint committee on which the Council is represented and/or speaking on behalf of the Council on a regular basis to journalists or broadcasters

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### **3 Terms and Conditions of Employment**

- 3.1 Section 1(5) LGHA 1989 states that ‘the terms of appointment or conditions of employment of every person holding a politically restricted post under a local authority (including persons appointed to such posts before the coming into force of this section) shall be deemed to incorporate such requirements for restricting his political activities as may be prescribed for the purposes of this subsection by regulations made by the Secretary of State.’

### **4 Employees standing for election**

- 4.1 Notwithstanding the period of notice referred to in contracts of employment, prior to announcing their candidature for election as a Member of the House of Commons, the European Parliament, the Scottish Parliament, Welsh Assembly or any Local Authority (excluding parish/town Councils), holders of politically restricted posts must, by notice in writing, addressed to their Manager and the Head of Paid Service, resign with immediate effect. It is left to the discretion of the Head of Paid Service whether or not to reinstate an employee who resigns his/her post, and then consequently fights and loses an election.
- 4.2 If standing for election, it is in the interests of those applying to the Head of Paid Service for exemption from political restriction or appealing for a direction as to whether their post is politically sensitive, to ensure that they make an application for a Certificate of Opinion (Appendix A) and then to submit their application/appeal to the Head of Paid Service, at least two months before they intend to stand for election.

### **5 Head of Paid Service's role**

- 5.1 The Head of Paid Service will, in consultation with the Monitoring Officer, consider applications from employees for exemption from political restriction or applications for a direction as to whether a post is politically sensitive, provided that the post is included in the list of politically restricted posts maintained by the Council or the Council proposes to specify the post as being politically restricted.
- 5.2 It is the post to which the exemption is granted, not the postholder (although in the majority of cases, the application will be made by a post holder who wants to carry out political activities).
- 5.3 If the Head of Paid Service, in consultation with the Monitoring Officer, determines that the duties of the post do not fall within the remit of section 2(3) of the LGHA 1989, the Head of Paid Service will direct that the post is not to be regarded as politically restricted and that the post be removed from the list of politically restricted posts maintained by the Council.
- 5.4 The Head of Paid Service in consultation with the Monitoring Officer may, on application from any person, review any post not included in the list of politically restricted posts. If the Head of Paid Service considers that the duties of the post fall within section 2(3) of LGHA 1989 and that the post is not currently included in either the list of politically restricted posts or in the Scheme of Delegations to Officers, then the Head of Paid Service may issue a directive that it be included in the list of politically restricted posts.
- 5.5 The Head of Paid Service will give priority according to the time available before any election, to any application for removal from the list of politically restricted posts by an



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employee who certifies that it is for the purpose of enabling him/her to be a candidate in a forthcoming election. Subject to section 6 below, the Head of Paid Service, in consultation with the Monitoring Officer, will give general advice on the application of criteria for designation of a politically restricted post.

**6 Head of Paid Service's discretion**

6.1 The only area over which the Head of Paid Service has discretion is whether or not a post falls within the parameters set out in section 2(3) LGHA 1989. Otherwise, the Head of Paid Service is entirely guided by legislation in determining whether applications for exemptions made to him should be granted – there is no scope for discretionary approvals, or for exemptions to be granted conditionally.

**7 Section 2(3) of LGHA 1989 guidance**

7.1 Although adjudication of matters arising as a result of differing interpretations of section 2(3) LGHA 1989 remains the prerogative of the Head of Paid Service, the following guidance aims to assist the Head of Paid Service in its decisions as to whether or not a post is politically restricted. The guidance is not binding on either the Council or the Head of Paid Service and is intended to offer assistance in decision-making without fettering the discretion of either party.

7.2 Section 2(3) of LGHA 1989, states:

'The duties of a post under a local authority fall within this subsection if they consist in or involve one or both of the following, that is to say –

- (b) giving advice on a regular basis to the authority themselves, to any committee or sub-committee of the authority or to any Joint Committee on which the authority are represented, or, where the authority are operating executive arrangements, to the executive of the authority, to any committee of that executive, or to any Member of that executive who is also a Member of the authority;
- (c) speaking on behalf of the authority on a regular basis to journalists or broadcasters.'

7.3 There are several questions raised by the wording of section 2(3) LGHA 1989:

- (a) Is a 'post under a local authority' limited to a post held by an employee of the Council?
- (b) What do the words 'consist in or involve' imply?
- (c) What constitutes 'advice'?
- (d) What constitutes 'on a regular basis'?
- (e) Does advice have to be proffered to the whole authority, committee, sub-committee or Joint Committee or to any one Member of such a body?
- (f) Does speaking mean giving formal presentations or does it include answering telephone queries? Would distributing a written press release constitute speaking to journalists and broadcasters?

7.4 In interpreting the provisions of section 2(3) LGHA 1989, the following may be taken into account:

- (a) 'Post under a local authority' - in this context, may be taken to mean any post established by the Council, whether the incumbent is a permanent full or part time employee, a temporary employee, a person seconded to the Council from another body or a consultant under contract to the Council.
- (b) 'Consist in or involve' - in this context, may be taken to mean that either giving advice to the Council/Cabinet etc or speaking to the media, or both, constitute a recognised part of the postholder's activities.
- (c) 'Advice' - in this context, may be taken to mean information provided with the intention that it should influence:
  - (i) the policy adopted by the Council in respect of any matter properly before it;
  - (ii) any strategic decisions made by or on behalf of the Council.
- (d) 'Regular basis' - in this context, may be taken to mean that the activity to which it refers is:
  - (i) incorporated in the job profile for the post; or
  - (ii) undertaken as an expected part of the postholder's normal duties (example postholder is required to draft reports containing advice and/or recommendations; postholder is required to attend committee meetings; postholder is required to speak at meetings);
  - (iii) undertaken on more than an occasional basis, though not necessarily frequently.
- (e) 'The body to whom the advice is offered' - may in this context, consist of any number of Members from one upwards, as long as the Member or Members concerned, are acting in their official capacity as Members of the Council/Cabinet or any of its committees, sub-committees or Joint Committees.
- (f) 'Speaking' - in this context, may be taken to mean the passing of any information, whether verbally or through the written word, to a journalist or broadcaster when it is reasonable to assume that the postholder knows that the information so provided is likely to be disseminated to the public at large.

## **8 How to apply for an exemption – (sensitive duties posts only)**

- 8.1 The postholder may apply to the Head of Paid Service to be exempted from the third category list (sensitive duties post).
- 8.2 All applications require a letter from the postholder addressed to the Head of Paid Service. The application will state the title of the post, the basis upon which the post is currently deemed to be politically restricted and the reason why the postholder considers that political restriction is no longer appropriate e.g. they no longer influence policy or that the Council has incorrectly applied the duties criteria to the post (see section 7 above). The application will be accompanied by a certified job profile of the post.
- 8.3 The Head of Paid Service may provide the postholder with an opportunity to make oral representations in support of their application. The postholder may be accompanied by an accredited trade union representative or work colleague.

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- 8.4 Prior to issuing a direction in accordance with 8.5 below, the Head of Paid Service must consult the Monitoring Officer.
- 8.5 The Head of Paid Service will issue a direction in the form of a Certificate of Opinion (Appendix A), as to whether or not, in his opinion, the duties of the post meet the section 2(3) LGHA 1989 criteria, for politically restricted posts.
- 8.6 If the Head of Paid Service directs that the duties of the post are not to be regarded as a politically restricted post, the Monitoring Officer and Human Resources will comply with the direction and remove the post from the third category list.
- 8.7 The postholder will be notified by the Monitoring Officer and Human Resources of the Head of Paid Service's decision, within five days' of the date of the Certificate of Opinion.
- 8.8 The decision of the Head of Paid Service is final. There is no right of internal appeal.

9 **Directions to include a post in the list of politically restricted posts**

- 9.1 An application may be made to the Head of Paid Service by the incumbents of posts or any person for a direction that a post be included in the list of politically restricted posts. This would apply in a case where the Council had not designated a post as politically restricted and may be unwilling to do so.
- 9.2 The procedure detailed in section 8 above will apply. The Head of Paid Service may only give a direction where he determines that the post satisfies the test referred to in section 2(3) LGHA 1989 AND the post is neither referred to in the Scheme of Delegations to Officers nor listed as a politically restricted posts.

10 **Applications for exemption from persons not yet in post**

- 10.1 The Head of Paid Service will only consider applications for exemption from persons who have received formal job offers from the Council. The Head of Paid Service will not consider applications from persons who are only considering applying for a Council post, but who have not received a job offer.

11 **New employee appointments**

- 11.1 Where new appointments are made to posts included in the third category list, the Council's letter of appointment must refer to the fact that the post is politically restricted.

12 **Transferring exemptions to another local authority or post**

- 12.1 The LGHA 1989 requires an application for exemption to be made by the post holder in respect of a particular post and accompanied by a Certificate of Opinion relating to the duties of the post at the time of the application for exemption. An original exemption cannot therefore be transferred to another local authority or to another post.

13 **Amendments to this Procedure**

The Head of Paid Service has delegated authority to amend this Procedure.

**APPENDIX A - Politically Restricted Posts - Certificate of Opinion  
BRENTWOOD BOROUGH COUNCIL  
LOCAL GOVERNMENT AND HOUSING ACT 1989**

Section 2(3) of the Local Government and Housing Act 1989 states that political restriction applies where the postholder:

- (a) gives advice on a regular basis to the authority themselves, to any committee or sub-committee of the authority or to any Joint Committee on which the authority are represented, or, where the authority are operating executive arrangements, to the executive of the authority, to any committee of that executive, or to any Member of that executive who is also a Member of the authority;
- (b) speaks on behalf of the authority on a regular basis to journalists or broadcasters.

**HEAD OF PAID SERVICE'S STATEMENT**

This is to certify that it is Brentwood Borough Council's opinion that the duties of the under mentioned post:

(\*Please tick appropriate box)  
do fall within section 2(3) of the Local Government and Housing Act 1989\*   
do not fall within section 2(3) of the Local Government and Housing Act 1989\*

Post Title: .....

Full Name of Current Postholder: .....

Postholder's salary: £ ..... Grade .....

Job Profile (please attach)

It is a requirement that the job profile contains adequate information. For filled posts, the information provided needs to show to what extent, over the past twelve months, the postholder has advised the General Assembly of the Council, its committees or sub-committees, or Joint Committees or a Lead Member and/or spoken regularly for Brentwood Borough Council, to journalists and broadcasters.

For new posts, it will be necessary to state to what degree it is anticipated the postholder will be carrying out the duties as outlined above.

**Head of Paid Service:**  
Name: ..... Signature .....

Date:  
Date:



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## CHAPTER 6 - MEMBERS' ALLOWANCES SCHEME

### PART 6.1 - MEMBERS' ALLOWANCE SCHEME

#### 1. Introduction

- 1.1 This scheme is made under the powers conferred by the Local Authorities (Members' Allowances) Regulation 2003 and will be effective ~~on and from 15 May 2013 until 14 May 2014~~ for the 2014/2015 Municipal Year.
- 1.2 Members of Brentwood Borough Council may claim the following allowances as specified in the Appendix to this Scheme:
  - Basic Allowances
  - Special Responsibility Allowance
- 1.3 Generally Travel and Subsistence Allowances will not be paid except in the circumstances set out in this Scheme.
- 1.4 Basic and Special Responsibility Allowances will be paid in equal monthly instalments and will be subject to tax and national insurance deductions. Payments will be made directly to members' bank accounts. Adjustments required, as a result of amendments to the Members' Allowances Scheme or changes affecting a member's eligibility for an allowance, will be made after the affected members have had a written explanation of the change and notification of the date on which it will be implemented.
- 1.5 All claims for Travel and Subsistence, Co-opted Member's Independent Persons and Allowances will be paid retrospectively. Payments will be made monthly to the member's or co-opted member's bank account but, in exceptional circumstances, and subject to approval by the Chief Executive of a properly evidenced claim, a cheque or cash payment can be considered.
- 1.6 The allowances and expenses specified in this Scheme are the only ones that members and co-opted members are entitled to claim from the Council.
- 1.7 Co-opted members representing community or interest groups cannot receive allowances from the Borough Council if they are entitled to claim expenses or allowances from their nominating group for the same duties.

#### 2. The Basic Allowance

- 2.1 The Basic Allowance will be paid to each eligible member in equal monthly instalments and will be subject to tax and national insurance deductions.
- 2.2 Members will inevitably incur a range of expenses in the course of carrying out council business. The Basic Allowance is intended as a contribution towards those expenses.

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### 3. **Special Responsibility Allowances**

- 3.1 A Special Responsibility Allowance will be paid to a member who holds any of the offices specified in the Appendix. It will be paid to each eligible member in equal monthly instalments and will be subject to tax and national insurance deductions.
- 3.2 No member may receive more than one Special Responsibility Allowance. Where a member holds more than one post, they will receive the highest of the Allowances appropriate to the posts.
- 3.3 For the purposes of calculating SRAs for the Leader and Deputy Leaders of political groups, a political group is defined as two or more councillors who notify their intention to become a group as required by the Local Government and Housing Act 1989.
- 3.4 The Scheme recognises that there are two minority opposition groups. Should a further minority opposition group be established then the issue of a Special Responsibility Allowance will be referred to the Independent Remuneration Panel.

### 4. **Travel and Subsistence Allowances**

- 4.1 Travel and Subsistence Allowances are not payable except as set out in paragraph 4.2.
- 4.2 Members attending conferences/external training sessions will be reimbursed for 'reasonable expenses' including, where necessary, accommodation subject to such expenses being agreed with the Chief Executive in advance.

### 5. **Co-opted Members and the Independent Person**

- 5.1 Co-opted members and the Independent Person will be reimbursed for reasonable expenses.

### 6. **Claiming Allowances**

- 6.1 Claims for Travel, Subsistence, co-opted members' and Independent Persons' allowances must be made within two months of the date on which the expenditure was incurred. Claims submitted by the tenth day of the month will be paid in the same month. In exceptional circumstances, the Council will meet claims submitted later than two months after the event.

### 7. **Taxation**

- 7.1 Allowances are liable for Income Tax and National Insurance contributions.
- 7.2 Members are advised to seek independent advice on their own taxation position.

### 8. **Renunciation**

- 8.1 A councillor may renounce an entitlement to any or all of these allowances by giving notice in writing to the Chief Executive.

9. **Amendments to the Scheme**

- 9.1 No amendments can be made to the Scheme without prior consultation with the Council's Independent Remuneration Panel and any amendments must have regard to the Panel's recommendations.



<b>Appendix</b>				
<b>Members Allowances 2014-15</b>				
		<b>Number</b>	<b>Allowance 2014-15</b>	<b>Notes</b>
Basic Allowance		37	6,010.31	
Leader		1	13,217.11	
Deputy Leader		1	6,380.68	
Leader of Main Opposition		1	5,318.75	
Leader of Minority Opposition		0		
Chair of Community Committee		1	3,545.83	
Chair of Housing Committee		1	3,545.83	
Chair of Asset and Enterprise Committee		1	3,545.83	
Chair of Environment Committee		1	3,545.83	(Deputy Leader of the Council)
Chair of Business and Town Centres Committee		1	3,545.83	
Chair of Audit and Scrutiny Committee		1	3,545.83	
Chair of Finance and Resources Committee		1	3,545.83	
Chair of Planning and Development Control Committee		1	3,545.83	(Leader of the Council)
Chair of Licensing Committee		1	3,545.83	
Vice-Chair of Community Committee		1	967.15	
Vice-Chair of Housing Committee		1	967.15	
Vice-Chair of Asset and Enterprise Committee		1	967.15	
Vice-Chair of Environment Committee		1	967.15	
Vice-Chair of Business and Town Centres Committee		1	967.15	
Vice-Chair of Audit and Scrutiny Committee		1	967.15	
Vice-Chair of Finance and Resources Committee		1	967.15	(Deputy Leader of the Council)
Vice-Chair of Planning and Development Control Committee		1	967.15	(Lead Member for Working Groups)
Vice-Chair of Licensing Committee		1	967.15	
Lead Member for Working Groups		1	2,256.49	

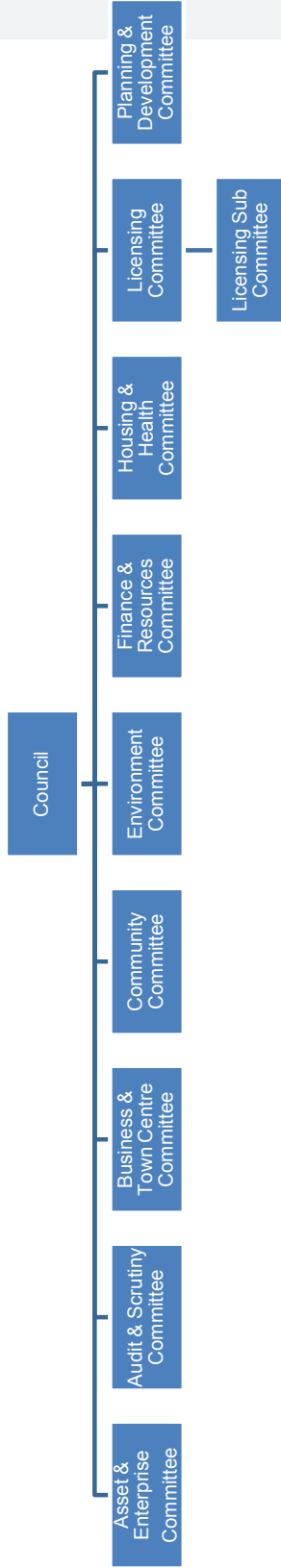
### INDEPENDENT REMUNERATION PANEL

1. The Borough Council is required to establish and maintain an Independent Remuneration Panel. The purpose of the panel is to make recommendations to the Council about the allowances to be paid to elected Members of the Council.
2. The Council has appointed an Independent Remuneration Panel comprising of three individuals who are independent of the Council.
3. The terms of reference of the Independent Remuneration Panel are:-
4. To review the Council's existing scheme of allowances and to make recommendations to the Council thereon. In accordance with the regulations this incorporates the following functions whether or not covered by the existing scheme:
  - (a) to make recommendations to the authority as to the amount of basic allowance that should be payable to its elected members;
  - (b) to make recommendations to the authority about the categories of members who should receive a special responsibility allowance and as to the amount of such an allowance.
  - (c) to make recommendations to the authority about the duties for which a travelling and subsistence allowance can be paid and as to the amount of this allowance.
  - (d) to make recommendations as to the amount of co-optees allowance.
  - (e) to make recommendations as to whether the authority's allowances scheme should include an allowance in respect of the expenses of arranging for the care of children and dependants and if it does make such a recommendation, the amount of this allowance and the means by which it is determined.
  - (f) to make recommendations on whether any allowance should be backdated to the beginning of a financial year.
  - (g) to make recommendations as to whether annual adjustments of allowance levels may be made by reference to an index, and, if so, for how long such a measure should run.



## CHAPTER 7 - GOVERNANCE STRUCTURE

### PART 7.1 - GOVERNANCE STRUCTURE





## CHAPTER 8 - GLOSSARY OF TERMS

[Audit and Scrutiny Committee – Committee appointed pursuant to section 219JA\(1\) of the Local Government Act 2000.](#)

[Chief Executive – the Head of the Paid Service and Chief Officer.](#)

**Chief Finance Officer** – officer appointed under section 151 Local Government Act 1972.

**Chief Officers** – members of staff appointed by the Council pursuant to Local Authorities (Standing Orders) (England) Regulations 2001 – the Head of the Paid Service and Chief Finance Officer.

**Confidential information** – information given to the council by a government department on terms that forbid its public disclosure or information that cannot be publicly disclosed by court order.

**Constitution Working Group** – cross party consultative body consisting of eight Members appointed by the Group Leaders.

**Designated Independent Person** – person appointed under the Localism Act 2011 to be consulted in cases where there are complaints about the conduct of Members.

**Designated Office** – Town Hall, Ingrave Road, Brentwood.

**Exempt information** – information defined in schedule 12A Local Government Act 1972.

[Head of the Paid Service – this has the meaning set out in section 4 Local Government and Housing Act 1989.](#)

**Leader of the Council** – Leader elected from Members of the Council .

~~[Head of the Paid Service – this has the meaning set out in section 4 Local Government and Housing Act 1989.](#)~~

**Main Opposition Leader** – The Leader of the second largest political group on the Council is the Main Opposition Leader.

~~[Chief Executive – the Head of the Paid Service and Chief Officer.](#)~~

**Mayor** – ceremonial head of the Council.

**Members** – persons elected to the Borough ~~council~~ Council and also known as Councillors.

**Monitoring Officer**- as defined in section 5 Local Government and Housing Act 1989.

~~[Audit and Scrutiny Committee – Committee appointed pursuant to section 21 Local Government Act 2000.](#)~~

**Petition** – where the context indicates, a request for a referendum for an elected mayor.

**Policy framework** – the following plans and strategies: ~~to be completed when Article 4 is agreed~~.

- (a) The Corporate Plan;
- (b) The local development framework;
- (c) Treasury management strategy;
- (d) Sustainable community strategy;
- (e) Crime and disorder reduction strategy; and
- (f) Licensing authority statement.

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**Political Group** – this has the meaning set out in the Local Government and Housing Act 1989. Two or more members who give written notice of their wish to be treated as a group.

**Principle of Democratic Accountability** – The concept that Members are not expected to act in a quasi-judicial capacity as they are democratically elected on a policy platform and can be expected to have such predisposed views.

**Proportionality** – the allocation of seats on committees to political groups in accordance with the proportion of seats held on the Council by those political groups.

**Quasi-judicial** – the action taken and discretion exercised by public administrative agencies or bodies that are obliged to investigate or ascertain facts and draw conclusions from them as the foundation for official actions.

**Quorum** – one quarter of the whole number of members at the meeting provided that at no meeting will a quorum be fewer than ~~two-three members~~ Members of the Council.

**Regulatory** – the function of the Council concerned with control or direction in accordance with established rules, principles or the law.

**Section 151 Officer** – officer appointed under section 151 Local Government Act 1972.

**Statutory Officer** – Head of Paid Service, Section 151 Officer, Monitoring Officer.

**Urgent Business** – any item of business that is accepted by the ~~Mayor~~ Chair of a meeting because of special circumstances which will be specified in the minute recording their decision.

**Working days for publication of an agenda for a Council or a committee meeting** – a working day excludes the day that the notice is given and the date of the meeting if the provision relates to the date of a meeting. For example if the requirement is to give five working days notice and the notice is given on a Wednesday then five working days will expire on the following Wednesday evening.

| [APPENDICES](#) [APPENDIX](#)

Appendix A Delegations to staff

| [Appendix B](#) ~~Process for election of Mayor and Deputy Mayor~~



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**APPENDIX A - DELEGATIONS TO STAFF**

BRENTWOOD BOROUGH COUNCIL  
REGISTER OF POWERS DELEGATED  
AND  
DESIGNATED PROPER OFFICERS  
(Section 100G Local Government Act 1972)

### NOTES

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1. **General authority for delegation** - contained in Section 101 of the Local Government Act 1972 and section 10 of the [Licensing Act 2003](#).
2. **Delegation to Committees** – See current Constitution/Council Handbook
3. **Basis of Delegation**
- Where the Council, a committee or sub-committee, has delegated a function to an Officer, the person or body making the delegation may at any time resume responsibility for the function either in respect of a particular matter or generally, and so may exercise the function despite the delegation. An Officer to whom a power is delegated may refer the matter to the Chief Executive, or to the person or body making the delegation, for their determination. It will be appropriate for the Officer so to refer a matter:
- (a) To the Chief Executive where the determination of the matter raises issues of corporate priorities or the co-ordination of the discharge of various functions of the authority
  - (b) To the person or body making the delegation where the determination of the matter is likely to be particularly controversial or raises issues of policy which it would be appropriate for Members to determine; or could, by its scale or complexity expose the Council to major corporate risk which cannot be contained within Budgets
- In exercising any delegated powers, Officers should ensure that decisions are consistent with Council policy, within approved spending limits, and in the best interests of residents and the Council as a whole. Elected Members should be informed/consulted as appropriate depending on the nature and sensitivity of the decision.
4. **Conflicts of Interest**
- Every Officer is responsible for identifying whether he/she has any conflict of interest in any matter which is under consideration, actual or perceived, within the authority, and notifying the authority (including under section 117 of the Local Government Act 1972). Where an Officer has a conflict of interest in any matter, he/she shall not participate in that matter in his/her capacity as an Officer except with the prior approval of the Monitoring Officer or the Chief Executive.

Where the Chief Executive is unable to act on a matter because of a conflict of interest, the matter shall be discharged by the appropriate Head of Service, where the appropriate Head of Service is unable to act the matter shall be discharged by the Heads of Service collectively, or by such Officer as they shall determine for this purpose.

Where a Head of Service is unable to act on a matter because of a conflict of interest, the Chief Executive shall discharge the matter him/herself or allocate the matter to another Officer.

Where the Monitoring Officer is unable to act on a matter in his/her statutory capacity under section 5 of the Local Government and Housing Act 1989, the matter shall be discharged by the Officer designated by the Monitoring Officer as Deputy Monitoring Officer.

Where the Monitoring Officer is unable to act on a matter in relation of Member conduct, the matter shall be discharged by the person appointed by the Monitoring Officer for this purpose ~~under section 82A of the Local Government Act 2000~~.

Where any other Officer is unable to act on a matter that Officer's line manager or the Chief Executive may discharge the matter or may arrange for another Officer to discharge the matter.

#### 5. General Conditions and Limitations

In taking any decision, each Officer must ensure that they have acted in a considered, well informed and defensible manner which is in the best interests of the Council and its residents. The more significant the decision, the greater the obligation to demonstrate that appropriate consideration has been given to the way the decision was made.

As a general rule all decisions will need to be made with a full understanding of Council policy relating to the decision, an awareness of relevant legal obligations including equality requirements, and a clear assessment of the impact of the decision on those affected. Decisions will also need to be consistent with the Council's Budget strategy and will need to be effectively risk assessed.

The obligation to ensure that these issues are properly understood rests with decision makers. Where doubt exists advice must be taken from those officers who are professionally qualified to give advice such as the Council's Monitoring Officer. Officers must not commit the Council to a course of action which will entail financial obligations beyond those approved by the Council.

Where the decision is politically sensitive or likely to affect significant numbers of residents, decision makers are under a general obligation to consult with those from whom the decision is delegated and ward Members where appropriate. Where realistic choices exist and where good practice would suggest it to be appropriate public consultation should be undertaken after consulting with appropriate Members.

No Officer other than the Monitoring Officer shall authorise or institute any legal proceedings or process or instruct legal agents or Counsel without the prior written consent of the Monitoring Officer. The Chief Executive may allocate or re-allocate responsibility for functions between Officers as necessary for the effective discharge of those functions or to cover absence of particular Officers.

Where an Officer is going to be absent for a period of time, he/she or his/her line manager may re-allocate responsibility for that Officer's functions as necessary to ensure the effective discharge of those functions during the Officer's absence. Where the Chief Executive is going to be absent for a period of time then responsibility for the Chief Executive's functions as necessary to ensure the effective discharge of those functions during the Chief Executive's absence shall be allocated to the appropriate Heads of Service, unless otherwise allocated by the Chief Executive.

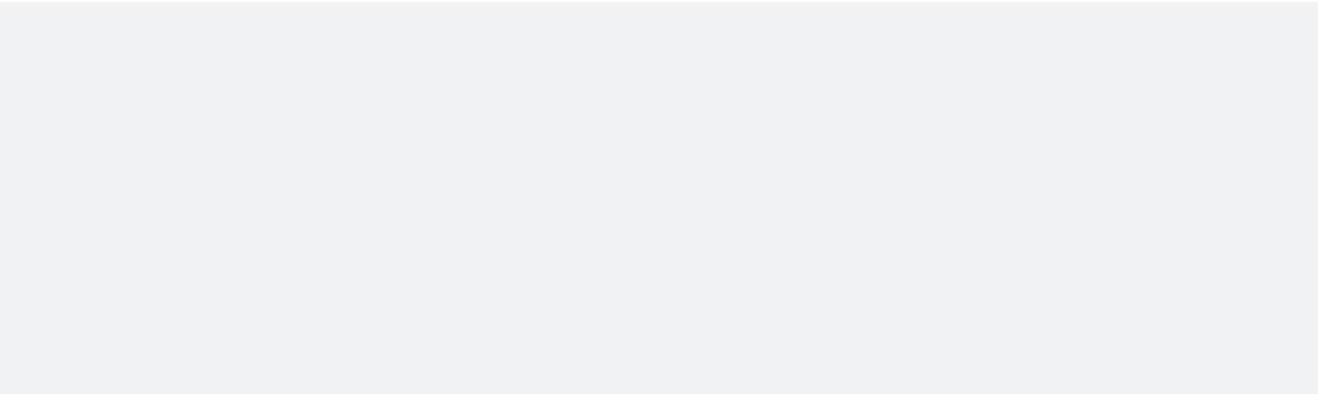
Where a function is delegated to an officer it shall also be exercisable by his/her Head of Service. Where a function is delegated to a Head of Service it shall also be exercisable by the Chief Executive, except the functions of Monitoring Officer and Section 151 Officer. Where a function is stated to be specifically delegated to a particular Officer, that function shall not be exercised by any other Officer, except in accordance with this Scheme.

Staff exercising delegated powers shall do so with regard to Article 1.3 – Purpose of the Constitution and Article 10.2 – Principles of Decision Making. Abbreviations used in the Register are as follows:

CE	Chief Executive
DoSCS	Director of Strategy & Corporate Services
MO/HoL	Monitoring Officer or Head of Legal
HoBHSL	Head of Borough Health, Safety & Localism
Ho CS	Head of Customer Services
HoPD	Head of Planning and Development
HoH	Head of Housing
HoSS	Head of Street Scene
RBM	Revenues and Benefits Manager
PLO	Principal Licensing Officer
PHO(N)	Principal Housing Officer (Needs)
SAM	Strategic Asset Manager

6. Certain legislative changes have occurred since various delegations were originally granted. For the avoidance of doubt all delegations refer to the legislation quoted and any subsequent amendments.

7. Where authority is delegated in the Register to take 'all appropriate action' or 'all necessary action' such action shall be interpreted as 'all reasonable appropriate action' or 'all reasonable necessary action'.



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INDEX – FUNCTIONS

ASSETS OF COMMUNITY VALUE (AV)

A1 Administration and Determination

COUNCIL AND MEMBER ADMINISTRATION: (CA):

- CA. 1 Signing and Certification of Documents
- CA. 2 Meetings of the Council, Panels and Committees
- CA. 3 Publication of Information etc.
- CA. 4 Member Administration
- CA. 5 Contracts
- CA. 6 Custody of Seal and Documents
- CA. 7 Miscellaneous
- CA. 8 Strategic Management
- CA. 9 Local Strategic Partnership/Local Area Agreement
- CA. 10 Performance

COUNCIL PROPERTY: (CP):

- CP. 1 Leases and Licences
- CP. 2 Land Uses

ELECTIONS: (EL):

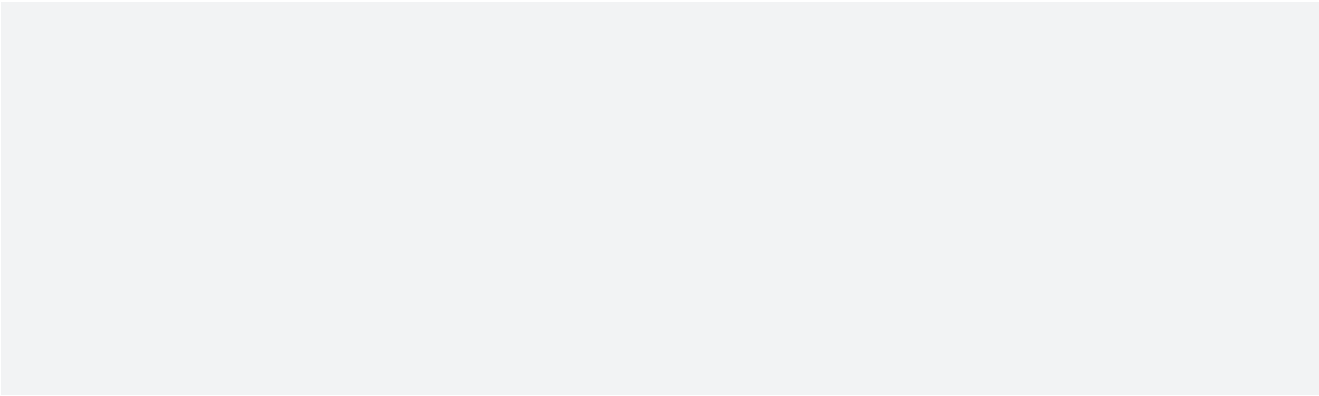
- EL. 1 Register of Electors
- EL. 2 District and Parish Elections
- EL. 3 Parliamentary Elections
- EL. 4 Fees and Expenses at Elections

EMERGENCY POWERS & ACTION: (EM):

- EM. 1 Emergency Planning
- EM. 2 Emergency Action

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FINANCE & RATING: (FR):

FR. 1	Financial Administration
FR. 2	Rating
FR. 3	Debts
FR. 4	Grants & Loans
FR. 5	Borrowing & Banking
FR. 6	Estimates
FR. 7	Charities
FR. 8	Application for Discretionary Rate Relief & Village Shop Rate Relief
FR. 9	Grants to Voluntary Organisations and Miscellaneous Grant Applications
FR.10	I.E.G.
FR.11	Community Initiatives Fund

HIGHWAYS: (HY):

HY. 1	General
HY. 2	Traffic Management
HY. 3	Works etc in/adj. Highway
HY. 4	Street Numbering & Naming
HY. 5	Private & New Streets
HY. 6	Contracts, Tenders, etc.

HOUSING: (HO):

HO. 1	Lettings
HO. 2	Rents and Charges
HO. 3	Squatters/Trespassers
HO. 4	Shops
HO. 5	Housing the Homeless
HO. 6	Council House Sales



- HO. 7 Housing Advances
- HO. 8 Housing Maintenance & Housing Investment Programmes

LICENSING: (LI):

- LI.1 Licensing

PARKS & OPEN SPACES: (PO):

- PO. 1 Allotments
- PO. 2 Damage, Trespass etc.
- PO. 3 Events, Lettings, etc.
- PO. 4 Commons – Management etc.

PERSONNEL MANAGEMENT: (PM):

- PM. 1 Statutory Duties & Delegations of Head of Paid Service
- PM. 2 Organisational Development
- PM. 3 Appointment Recruitment & Retention of Staff
- PM. 4 Staff Performance and Appraisals
- PM. 5 Staff Training and Development
- PM. 6 Employee and Industrial Relations
- PM. 7 Grievance and Disciplinary Procedures
- PM. 8 Terminations of Employment
- PM. 9 Employment Regeneration
- PM.10 Use of Council Offices
- PM.11 Miscellaneous

PLANNING & BUILDING CONTROL: (PB):

- PB. 1 General
- PB. 2 Building Regulations
- PB. 3 Planning Applications
- PB. 4 Public Authority Development
- PB. 5 Permitted Development
- PB. 6 Stop Notices, Enforcement and Appeals
- PB. 7 Building Preservation
- PB. 8 Tree Preservation
- PB. 9 High Hedge Complaints
- PB. 10 Local Development Framework Working Party

PUBLIC HEALTH: (PH):

- PH. 1 General
- PH. 2 Food & Drugs
- PH. 3 Control of Pollution
- PH. 4 Health & Safety at Work
- PH. 5 House Improvements
- PH. 6 Protection of Buildings

	<b>ASSETS OF COMMUNITY VALUE</b>		<b>DELEGATED TO</b>	<b>Formatted:</b> Font color: Text 1
<b>AV1</b>	<b>Administration and Determination</b>			<b>Formatted:</b> Font color: Text 1
AV1/1	Administration of and determination of matters relating to Assets of Community Value under the Localism Act 2011.		HoBHSL	<b>Formatted:</b> Font color: Text 1
	<b>COUNCIL AND MEMBER ADMINISTRATION</b>		<b>DELEGATED TO</b>	<b>Formatted:</b> Font: Not Bold
<b>CA1</b>	<b>Signing and Certification of Documents</b>			<b>Formatted:</b> Font: Not Bold
CA1/1	<p><u>Signing of Documents</u></p> <p>(1) General authority to sign documents on behalf of the Council.</p> <p>(2) Signing of any document required in legal proceedings unless any enactment requires otherwise or authority has been granted to some other person.</p> <p>(3) Signing of Contracts relating to land transactions and Land Charge Certificates on behalf of the Council.</p> <p>(4) Persons to attest the Common Seal of the Council.</p>		<p>(1) &amp; (2) CE, MO/HOL</p> <p>(3) CE, MO/HOL</p> <p>(4) Mayor or Deputy Mayor or Member of the Council, CE and MO/HOL</p>	
CA1/2	<p><u>Certification of Documents</u></p> <p>(1) Certification of any document or photographic copy of a document required in legal proceedings or of any copy of a document or part of a document which has been destroyed while in the custody of the Council.</p> <p>(2) Certification of a printed copy of a byelaw.</p>		<p>CE and MO/HOL</p> <p>CE and MO/HOL</p>	
<b>CA2</b>	<b>Meetings of Council and Committees</b>			
CA2/1	<p><u>Special Meetings</u></p> <p>(1) Special Meetings of the Council (or committees) – authority to call.</p> <p>(2) Issue of Summons to attend meetings “Proper Officer”.</p>		<p>Mayor or <u>CE/MO/Section 151 Officer</u>, <u>Chair of committee</u> or <u>requisition of 5 Members</u>. <u>As regards, committees, the relevant Chair of the committee</u></p> <p>MO/CE</p>	

	<b>ASSETS OF COMMUNITY VALUE</b>		<b>DELEGATED TO</b>	<b>Formatted:</b> Font color: Text 1
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	<b>COUNCIL AND MEMBER ADMINISTRATION</b>		<b>DELEGATED TO</b>	<b>Formatted:</b> Font: Not Bold
CA2/2	Notices under Standing Orders Notices of Motion and Notices of Questions – Officer to receive.		CE/MO or, in her absence, DSCS	<b>Formatted:</b> Font: Not Bold

	<b>Council and Member Administration (cont)</b>	<b>Delegated to</b>
CA2/3	<p><u>Head of Paid Services, Monitoring Officer, Proper Officer for the Purposes of the Access to Information Act, Data Protection Officer and Whistleblowing Officer</u></p> <p>(1) Designation as Head of Council's Paid Service in accordance with Section 4 of the Local Government and Housing Act 1989.</p> <p>(2) Designation as Monitoring Officer in accordance with Section 5 of the Local Government and Housing Act 1989.</p> <p>(3) Designation as Proper Officer for the purposes of the Local Government (Access to Information) Act 1985.</p> <p>(4) Designation as Data Protection Officer with authority to take all appropriate action in connection with the Data Protection Act 1984 to ensure that all the Council's operations covered by the Act comply with the statutory requirements.</p> <p>(5) Designation as Freedom of Information Officer with authority to take all appropriate action in connection with the Freedom of Information Act 2000 to ensure that all the Council's operations covered by the Act comply with the statutory requirements.</p> <p>(6) In the absence of the Chief Executive where delegations are granted to the Chief Executive they shall apply and be exercised by such other officer nominated and authorised by the Chief Executive.</p> <p>(7) Whistleblowing Officer.</p>	<p>CE</p> <p>MO</p> <p>CE</p> <p>MO/HOL</p> <p>MO/HOL</p> <p>CE</p> <p>MO/HOL</p>
CA3	<b><u>Publication of information etc</u></b>	
CA3/1	<p><u>Statements/Publications</u></p> <p>Publication of information by local authorities – to approve all necessary statements/publications and method of distribution.</p>	CE in consultation with Chair or Vice-Chair of the Finance and Resources Committee where it is considered appropriate.
CA3/2	<u>Byelaws</u>	

<b>Council and Member Administration (cont)</b>		<b>Delegated to</b>
	Proper Officer to send and receive byelaws in accordance with provisions of S 236 Local Government Act 1972.	CE
CA3/3	<p><u>Public Information Panel and Tenants News</u></p> <p>(1) To authorise all appropriate action, including if appropriate, the waiving of Standing Orders – Contracts, to ensure the efficient and economical publication of information services to the press and public in accordance with the Council's policy, and</p> <p>(2) To determine the Council's policy with regard to the publication of newsletters/information for circulation to the Council's tenants.</p>	CE subject to prior consultation with Public Inf. Panel and in the case of (2) with the Chair or Vice-Chair of Community Committee
CA3/4	<p><u>Media Coverage of Council Activities and Allied Matters</u></p> <p>(1) To write to the Editor in appropriate cases seeking redress, where inaccurate or unbalanced reports are published;</p> <p>(2) Where an Officer's professional standing or integrity is maligned by deliberately malicious or ill considered comment by individuals or organisations, to take appropriate action including action through the Press Council and the Courts.</p>	<p>(1) CE</p> <p>(2) CE subject to prior consultation with the Chair and Vice-Chair of the Finance and Resources Committee with the Officer's concurrence.</p>
<b>CA4</b>	<b>Member Administration</b>	
CA4/1	<p><u>Proper Officer Designations</u></p> <p>Designation of Proper Officer to accept the following</p> <p>(i) Declarations of Acceptance of Office (Mayor, Deputy Mayor and Councillors;</p> <p>(ii) Written Notice of Resignation of Councillors;</p> <p>(iii) Notice of Relationships to Members or Senior Officers given by candidates for any appointment by the Council – report to be made to Finance and Resources Committee;</p> <p>(iv) Request for inspection of documents by Members;</p> <p>(v) Notices under The Local Government (Committees and Political Groups) Regulations 1990.</p>	CE, MO/HOL

	<b>Council and Member Administration (cont)</b>	<b>Delegated to</b>
CA4/2	<u>Requisition for Special Meetings</u> Requisition for Special Meetings of the Council (or Committees) in accordance with SO 1 – Officer to whom requisition to be made.	CE
CA4/3	<u>Standing Orders – copy to Members</u> Standing Orders – Officer to provide Members with copy.	MO/HOL
CA4/4	<u>Members – Claims for travelling or other allowances</u> Members of Council, including co-opted Members –claims for travelling or other allowances.	DoSCS
CA4/5	<u>Members' Allowances</u> To vary the amounts of each of the Allowances pro rata as may be permitted to the maximum total.	DoSCS /MO/HOL
CA5	<u>Contracts</u>	
CA5/1	<u>Interests of Officers</u> Pecuniary Interests of an Officer in a contract – Officer to keep records.	MO/HOL
CA5/2	<u>Appointing Contractors</u> (1) To enter into a contract for more than £10,000 but less than £50,000 provided that:- (i) the contract forms a continuation of a contract or variation thereto which is based on prices and rates obtained following procedures set out in Standing Orders (Contracts), or (ii) at least three quotations have been sought in accordance with the procedure defined under Standing Order (Contracts) 8.2.2 (iii) if the contract is over £25,000, the relevant Chair should be advised prior to the contract being awarded.	Appropriate Heads of Service.

	<b>Council and Member Administration (cont)</b>	<b>Delegated to</b>
	<p>(2) To enter into a Contract in the following exceptional circumstances</p> <p>(i) For the supply of goods where in the officer's professional judgement (which shall be recorded) there is only one supplier and no acceptable alternative,</p> <p>(ii) For the supply of goods and for services, which in the officer's professional judgement, is required in an emergency involving immediate risk to persons, property or serious disruption to Council services. A record of such judgement shall be made and a report made to the next appropriate committee.</p> <p>(iii) The Contract is an extension to an existing contract and a change of supplier would cause technical difficulties, diseconomies of scale or significant disruption to Council services.</p>	Section 151 Officer, Chief Executive or Monitoring Officer/HOL
CA5/3	<u>Nomination of Sub-Contractors</u> Nomination (subject to provisos) of Sub-Contractors and Suppliers to Main Contractor.	Appropriate Head of Service
CA5/4	<u>Appointment of Consultants</u> Appointment of Consultants, including Architects, Engineers and QS – compiling and maintaining standing list (of proven competence).	CE
CA5/5	<u>Receipt of Tenders</u> Tenders – receipt and opening.	The Procurement Officer and nominated Member (for contracts over £50K)
CA5/6	<u>Acceptance of Tenders</u> Tenders – acceptance of most economically advantageous tender..	Section 151 Officer in consultation with Head of Service concerned and Chair and Vice Chair of relevant Committee or Committee Panel. Where a tender is submitted by a Member of the Council, Section 151 Officer and



	Council and Member Administration (cont)	Delegated to
CA5/7	<p><u>Extending Existing Contracts</u></p> <p>(1) Authority to vary Contracts whose original sum does not exceed £250,000 on original terms and conditions for work of a similar character and nature, the same specification (if any) and at the same rates if any) by anything up to 5% of the original contract price or £10,000 whichever is greater subject to requirements concerning funding defined under Standing Order (Contracts 3.1).</p> <p>(2) Authority to extend contracts whose original sum exceeds £250,000 in respect of work of the same character and nature in accordance with the original specification and schedule of rates or bill of quantities by anything up to 5% or £50,000 whichever is the lesser subject to the requirements concerning funding defined under Standing Order (Contracts 3.2).</p>	<p>Monitoring Officer in consultation with Head of Service concerned and the Chair or Vice Chair of Finance and Resources Committee or relevant committee</p> <p>Section 151 Officer.</p>
CA6	<b>Custody of Seal and Documents</b>	
CA6/1	<p><u>Seal</u></p> <p>Custody of Seal of the Council.</p>	MO/HOL
CA6/2	<p><u>General Documents</u></p> <p>(1) Minutes, Contracts, Agreements, Documents of Title, Mortgages, Deeds and other Securities –Custody of, together with maintenance of terrier of property</p> <p>(2) Properties under the Housing Acts.</p>	MO/HOL
CA6/3	<p><u>Investment Certificates</u></p> <p>Custody of all investment certificates and other documents relating to loans and investments.</p>	DoSCS

	Council and Member Administration (cont)	Delegated to
<b>CA7</b>	<b>Miscellaneous</b>	
CA7/1	Subscription to Outside Organisations To determine the renewal of corporate subscriptions to outside organisations.	CE subject to consultation with the Chair and Vice-Chair of the Finance and Resources Committee and where appropriate the relevant Committee Chair.
CA7/2	Consultation Papers (1) To prepare and submit on behalf of the Council responses to Government and other consultation papers of general corporate, Borough or service input.  (2) To prepare and submit on behalf of the Council responses to purely technical consultation papers.	(1) CE subject to consultation with Chair and Vice-Chair of the appropriate committee and prior notification to all Members of the consultation papers received, together with officer comments via the Members' Newsletter. (2) CE
<b>CA8</b>	<b>Strategic Management</b>	
CA8/1	Strategic Policy Advisor to the Council.	CE
CA8/2	Responsibility for overall strategic direction of the Authority, including development and implementation of corporate policies and priorities, including the overall car park revenue and capital budget strategies.	CE
<b>CA9</b>	<b>Local Enterprise Partnership</b>	
CA9/1	Responsibility for the development of the Brentwood Local Strategic Partnership/Local Enterprise Partnership, the LSP Community Strategy and the local partnerships.	CE
CA9/2	Relations with the voluntary sector.	CE

Council and Member Administration (cont)		Delegated to
<b>CA10</b>	<b>Performance</b>	
CA10/1	Leading on corporate performance improvement strategies and responding to corporate assessments and other inspection regimes.	CE
<b>COUNCIL PROPERTY</b>		
<b>CP1</b>	<b>Leases and Licences</b>	
CP1/1	<p><u>Leasehold Reform Act 1967</u>            (1) Authority to determine whether tenants' claims to the freehold or an extended lease are valid, to serve landlord's Notices on behalf of the Council under the Act and regulations made thereunder to instruct a valuer to negotiate terms, and to settle the terms (other than the price or rent) on which the grant of the freehold or the extended lease should be made.</p> <p>(2) Where the MO/HOL is satisfied that a tenant's claim is valid – authority to approve the price or rent to be paid by the tenant for the freehold or extended lease of the property.</p>	<p>(1) HoH or SAM in consultation with MO/HoL</p> <p>(2) HoH or SAM in consultation with MO/HoL and Chair of Housing and Health Committee /Asset and Enterprise Committee</p>
CP1/2	<p><u>Rent reviews</u>            Authority in respect of all leases containing rent review clauses to negotiate and determine new rentals as these fall due for periodic review.</p>	SAM in consultation with MO/HoL

COUNCIL PROPERTY			
CP1/3	<p><u>Action on renewals</u>            (1) Initiation of action for renewal of tenancies, leases, licences and other similar disposals.            (2) To approve applications for the renewal of leases of Council land and property where no change of policy is involved subject to advice being obtained from the District Valuer as to rent where appropriate.</p>		SAM in consultation with MO/HoL  Heads of Service subject to consultation with MO/HoL, the Chair and the Vice-Chair of the appropriate Committee or Asset and Enterprise Committee
CP1/4	<p><u>King George's Field</u>            - granting of annual licences to occupiers of adjoining dwellings for access to park            - power to fix annual licence fee each year.</p>		SAM in consultation with MO/HoL, Chair or Vice Chair, Asset and Enterprise Committee Committee
CP2	<b>Land Uses</b>		
CP2/1	<p><u>General Authority to protect land etc.</u>            Authority to take all appropriate action and legal proceedings to protect land and other property owned, occupied or controlled by the Council as the case may be and/or to claim damages including proceedings for trespass, nuisance and criminal damage.</p>		MO/HOL in consultation with appropriate Head of Service subject to a report on any action taken being made to the next appropriate meeting or via the Members' Newsletter
CP2/2	<p><u>S.16 Local Government (Misc. Provisions) Act 1976 (Power of Local Authorities to obtain particulars of persons interested in land</u>            (a) To serve Notices pursuant to S.16 Local Government (Misc. Provisions) Act 1976;            (b) To institute legal proceedings against a person who fails to comply with the notice or knowingly or recklessly makes a statement false in material particular in response thereto.</p>		MO/HOL, HoPD, HoBHSL & duly authorised officers
CP2/3	<p><u>Metal Detecting on Council Land</u>            To grant permission to organised detecting groups and archaeological societies to investigate Council land within parks and open spaces which is about to be re-landscaped or developed and in relation to specific housing sites to grant permission to Brentwood &amp; District Metal Detecting Club and Historical or Archaeological Societies, where he/she is satisfied that their activities would not be</p>		CE

<b>COUNCIL PROPERTY</b>			
	prejudicial to development of the land and having regard to the interests of any neighbouring residents.		
CP2/4	<u>Regulation of Investigatory Powers Act 2000</u> Authority to direct surveillance or covert human intelligence sources in appropriate cases.		CE MO/HOL
CP2/5	<u>General</u> To determine applications for permission for repeat or similar events, activities or uses of Council land or property in accordance with previous decisions of the Council.		CE or Head of Service authorised by them.
CP2/6	<u>Disposal of Surplus Land for Housing Amenity Purposes</u> To approve applications for the disposal of small areas of amenity green or other housing land for garden extensions, etc. subject to advice being obtained from the District Valuer, together with appropriate planning consents.		SAM and HoH subject to consultation with the Chair and the Vice-Chair of the Assets and Enterprise Committee/Housing and Health Committee
<b>ELECTIONS</b>			
EL 1	<b>Register of Electors</b>		
EL 1/1	<u>Registration Officer</u> Registration Officer (S.8 Representation of the People Act 1983).		CE
EL 1/2	Deputy Registration Officer (S52(2) (Representation of the People Act 1983 as amended.		Electoral Services Manager
<b>EL2</b>	<b>District and Parish Elections</b>		
EL 2/1	<u>Returning Officer</u> Returning Officer (S.35 Representation of the People Act 1983		

<b>ELECTIONS</b>			
<b>EL3</b>	<b>Parliamentary Elections</b>		
EL3/1	Acting Returning Officer Acting Returning Officer (by virtue as appointment as Registration Officer (S.28 Representation of the People Act 1983.	CE	
<b>EL4</b>	<b>Fees and Expenses at Elections</b>		
	To increase fees and expenses paid at elections by a rate equivalent to the Council's annual salary award rounded upwards or downwards to the nearest 5p.		Registration Officer, subject to a report on the exercise of the delegations being included on the Members' Newsletter.
<b>EMERGENCY POWERS &amp; ACTION</b>			
<b>EM1</b>	<b>Emergency Planning</b>		
EM1/1	<b>Emergency Planning Officer</b>	HoCS	
<b>EM2</b>	<b>Emergency Action</b>		
EM2/1	<u>Urgent Action – Standing Orders</u> Urgent exercise of Council's Powers by an Officer – (SO 40).		Any Officer where the exercise of such powers has been sanctioned orally or in writing by the Chair or in his absence the Vice Chair of the Finance and Resources Committee or the committee having control of such powers together with the Mayor of the Borough and Leader of the Council (or in their absence the Deputy Mayor and Deputy Leader respectively).  Where authorisation is given orally, it shall be certificated in writing by the Members for

EMERGENCY POWERS & ACTION	
	<p>record purposes within 7 days of the authorisation.</p> <p>A report will be made on the circumstances which necessitated the exercise of these powers to Members via the Members' Newsletter.</p>
EM2/2	<p><u>Emergency expenditure</u> (F Regs 2.10)</p>
<p><b>FINANCE &amp; RATING</b></p>	
Page 255	<p><b>Financial Administration</b> Administration of Council's Financial Affairs Officer nominated as having responsibility for the proper administration of the financial affairs of the Council under Section 151 of the Local Government Finance Act 1972, as amended by the Local Government Finance Act 1988, under the general direction of Finance and Resources Committee. .</p> <p>(a) Accounting To determine all accounting procedures, the form of accounts and supporting records of the Council.</p> <p>(b) Objectives and Scope of Internal Audit</p> <p>(c) Banking Arrangements and Cheques All arrangements with Council bankers. Operation of banking accounts including National Giro.</p> <p>(d) Cash Floats</p> <p>(e) Orders for Work, Goods and Services</p>
	<p>DoSCS</p> <p>DoSCS where appropriate following discussion with relevant Directors.</p> <p>CE through the DoSCS DoSCS</p> <p>DoSCS DoSCS following consultation with Heads of</p>

FINANCE & RATING		Delegated to
	<p>Approval of form of official orders.</p> <p>(f) Payment of Accounts</p> <p>(g) Payment of Employees</p> <p>(h) Prescribed Form for time records</p> <p>(i) Determination as to whether an individual is an employee or contractor</p> <p>(j) Care and Custody of Stores</p> <p>(k) Approval of Form of claims for staff car mileage allowance</p> <p>(l) Receipt of Income</p> <p>Control of Collection of all monies due to the Council.</p> <p>Arrangements for acceptance of payments by instalments of any debt not exceeding £1,000 within one year due to the Council and originating from his directorate.</p> <p>Acceptance of Payments of Instalments at his discretion.</p> <p>(m) Loans and Investments</p> <p>Negotiations of all loans, investments, credit arrangements and equipment leasing arrangements in the name of the council.</p> <p>Registrar of Stocks Bonds Mortgages and other loans.</p> <p>(n) Inventories</p> <p>Agreement as to form of inventory.</p> <p>- Arrangements for the disposal of obsolete and redundant equipment. (If equipment is not sold at recognised public auction and market value is likely to exceed £5K at least three quotations must be obtained unless Finance and Resources Committee/Assets and Enterprise Committee decides otherwise).</p>	<p>Service</p> <p>DoSCS</p> <p>CE under arrangements and procedures agreed with DoSCS</p> <p>CE DoSCS</p> <p>CE</p> <p>Heads of Service</p> <p>DoSCS/All Heads of Service</p> <p>DoSCS/Head of Service</p> <p>DoSCS</p> <p>DoSCS and appropriate Head of Service</p> <p>Each Head of Service in consultation with DoSCS</p>



	<b>FINANCE &amp; RATING</b>		<b>Delegated to</b>
	<p>(o) Insurances Responsibility for effecting necessary insurance.</p> <p>(p) Security Arrangements for receipt opening of post.</p> <p><u>Ex-gratia Payments</u> Employees – damage to clothing etc – Authority to approve ex gratia payment of amounts not exceeding £1,000.</p>		<p>DoSCS (subject to satisfying relevant Director or officer appointed by him/her as to the level of insurance in appropriate circumstances relating to the services provided by the Directorate) DoSCS following consultation with Head of Service</p> <p>CE</p>
FR1/2			
FR1/3	<p><u>Finances, Housing Revenue Account, Capital Programme and Expenditure &amp; Funds and Balances</u></p> <p>(1) To take such action as he/she considers necessary, or appropriate, to conserve and strengthen funds and balances to safeguard and enhance the Council's financial position and Grant entitlements.</p> <p>(2) Authority to complete the necessary financing arrangements and documentation in respect of the capital programme to include the taking of all necessary action to maximise the Council's capital spending ability.</p> <p>(3) To maintain the Collection Fund and to credit to the Fund the items required by law to be so credited and to debit to the Fund the items required by law to be so debited, including interest accruing to the charging authority, payments debited in respect of non-domestic rates transferred to the national pool and payments to the Essex County Council, Essex Police Authority &amp; Fire Authority, Parish Councils and Brentwood Borough Council, payments representing repayment of any government grant and to invest any surplus arising from time to time on the fund.</p>		<p>DoSCS in consultation where appropriate with the Chair or Vice Chair of Finance and Resources Committee</p> <p>DoSCS subject to the approved capital programme not being exceeded without specific Council authority.</p> <p>DoSCS</p>

	<b>FINANCE &amp; RATING</b>		<b>Delegated to</b>
	<p>(4) To make such adjustments when and wherever appropriate in order to maximise the Housing Revenue Accounts entitlement to subsidy.</p> <p>(5) To take any action considered necessary or appropriate to maximise finances and resources for housing provided that if under current regulations such action increases the net expenditure falling on the General Fund any action taken shall be reported to Members.</p> <p>(6) To make further determinations under Part IV of the Local Government &amp; Housing Act 1989.</p> <p>(7) To invest appropriate Council funds in line with the approved Treasury Management strategy at his/her discretion in:</p> <ol style="list-style-type: none"> <li>1. The Council's bankers</li> <li>2. Other local authorities (excluding those who are charge capped).</li> <li>3. Building Societies (limited to the 20 major societies).</li> </ol>		<p>DoSCS subject to subsequent report being made to Finance and Resources Committee. DoSCS</p> <p>DoSCS</p> <p>DoSCS</p>
<p>Page 82</p>	<p><b>Rating</b></p>		
<p>NS2/1 NS58</p>	<p>Local Government Finance Act 1988 To take all appropriate action to implement, including billing, collecting and enforcing as appropriate, all matters arising from the Local Government Finance Act and subsequent regulations etc.</p>		<p>DoSCS</p>

	<b>FINANCE &amp; RATING</b>	<b>Delegated to</b>
FR2/2	<p><u>Council Tax/Community Charge &amp; National Non-Domestic Rate</u></p> <p>(1) To maintain the Council Tax/Community Charge Collection Fund and to credit to the Fund the items required by law to be so credited and to debit to the Fund the items required by law to be so debited, including interest accruing to the charging authority, payments debited in respect of non-domestic rates transferred to the national pool and payments to the Essex County Council, Essex Police Authority &amp; Fire Authority, Parish Councils and the Brentwood District Council payments representing repayment of any government grant.</p> <p>(2) Power to vary payment dates in respect of non-domestic rates if the Council is required to make payments into the Non-Domestic Rating Pool before the dates approved in Min. 522 (31.10.89).</p> <p>(3) To institute appeals in respect of the valuation of any Council property (national non-domestic rate purposes) and to take all necessary steps in that connection.</p> <p>(4) To maximise, to the benefit of the Council's Capital Programme, the Aggregate Credit Limit, including the use of other permissible methods of financing as he considers appropriate.</p> <p>(5) To consider and determine any application for transitional relief if it is received six months after the date on which the relevant Council Tax bill was sent out.</p> <p>(6) To determine the Council Tax Collection Fund payment dates.</p> <p>(7) To institute and defend all proceedings and appear on behalf of the Council before any Court of Summary Jurisdiction to recover Council Tax, Penalties, and Non-Domestic Rates remaining unpaid and to take whatever action is necessary for the billing, collection and recovery of the Council Tax, Penalties and National Non-Domestic Rate in accordance with existing and new legislation including applying and quashing penalties, issuing statutory requests for information, applying for Attachment of Earning Orders and deductions from income support, and refunding overpayments with interest where statutorily applicable.</p> <p>(8) To increase the charges for the issue of a summons and issue of a liability order by the amount of any increase(s) in Court charges levied on the Council effective from the date of such increase(s).</p> <p>(9) To introduce a charge of £25 for an application for a warrant of commitment to be increased as above as and when appropriate and to authorise to levy and collect</p>	<p>DoSCS DoSCS subject to written prior consultation with Chair &amp; Vice Chair Finance and Resources Committee DoSCS DoSCS subject to any action taken being reported to Finance and Resources Committee DoSCS DoSCS DoSCS</p> <p>DoSCS</p> <p>DoSCS</p>

FINANCE & RATING		Delegated to
	the charges.	
	(10) To borrow as and when required up to the maximum amounts permitted by the Capital and credit controls.	DoSCS subject to a report back on any action taken via the Members' Newsletter.
FR2/3	<p><b>Council Tax</b></p> <p>(1) To make any 78 appeals necessary in relation to Council properties and any other proposals on behalf of the Billing Authority, represent the Council at Valuation Tribunal hearings and sign agreements where required to do so.</p> <p>(2) To operate the Council Tax Benefits Scheme and to determine the backdating of benefit for the permitted maximum period of up to 52 weeks where the claimant can show good cause and increase weekly benefits in exceptional circumstances.</p> <p>(3) To increase the Council's costs by the amount of any increases made by the Court effective from the date(s) of such increase(s).</p> <p>(4) To institute and defend all proceedings and appear on behalf of the Council before any court of summary jurisdiction to recover Council Tax, National Non Domestic Rates and take whatever action is necessary for the billing, collection, and recovery of the Council Tax, National Non Domestic Rate and penalties in accordance with existing and new legislation including applying and quashing penalties, issuing statutory requests for information applying for Attachment of Earnings Orders and for deductions from income support and refunding overpayments with interest where statutorily applicable.</p> <p>Note: Delegations to the DoSCS will also apply to other members of the Revenues staff designated by the DoSCS for that purpose.</p>	<p>DoSCS</p> <p>DoSCS</p> <p>DoSCS</p> <p>DoSCS.</p>

FINANCE & RATING		Delegated to
R3 FR3/1	<p><b>Debts</b></p> <p><b>Write-off</b></p> <p>(a) Amounts up to four weeks for rents of dwellings and other premises, and service charges within the Housing Revenue Account (amount to be self adjusting according to annual rent levels).</p> <p>(b) Amounts above four weeks.</p> <p>(d) National Non-Domestic Rates where the write off is on the grounds of poverty under Section 49 of the Local Government Finance Act 1988, as amended.</p> <p>(e) Cases of bankruptcy and liquidation.</p> <p>(f) All other debts where the amount to be written off does not exceed £5,000.</p> <p>(g) All other cases where attempts to trace the debtor have failed.</p> <p>(Limitations in these Regulations marked * shall be increased by the DoSCS in line with the retail price index effective on 1<sup>st</sup> April in each year commencing in 2004).</p>	<p>HoH in consultation with S.151 officer</p> <p>HoH/DoSCS in consultation with Chair and Vice Chair of Housing and Health Committee (and reported to Finance and Resources Committee).</p> <p>DoSCS following consultation with the Chair and Vice Chair of the Finance and Resources Committee</p> <p>DoSCS</p> <p>DoSCS</p> <p>DoSCSF following consultation with Chair and Vice Chair of Finance and Resources Committee</p>
FR3/2	<p><b>Affidavits</b></p> <p>Swearing affidavits for proof of debt in cases of bankruptcy etc.</p>	<p>DoSCS, Any other Officer designated by the DoSCS</p>
FR3/3	<p>Representation in the Magistrates Court and County Court Authority to carry out the following duties pursuant to S.223 of the Local Government Act 1972.</p>	

<b>FINANCE &amp; RATING</b>		<b>Delegated to</b>
FR3/3	<p>(a) To appear in the Magistrates' Court where prosecutions have been brought or on other matters before the Magistrates' Court.</p> <p>(b) Pursuant to Section 60(2) of the County Court's Act, 1984</p> <p style="padding-left: 20px;">(i) the recovering of possession in the County Court of a house belonging to the Council (house includes a part of a house, a flat or any other dwelling and also includes any yard, garden, outhouse or appurtenance occupied with the house or part of a house or with a flat or other dwelling).</p> <p style="padding-left: 20px;">(ii) the recovery of any rent, mesne profits, damages or other sum claimed by the Council in respect of the occupation by any person of such a house.</p> <p>(c) Pursuant to the Access to Justices Act 1999 the Courts and Legal Services Act 1990.</p> <p style="padding-left: 20px;">(i) the recovery of possession in the County Court of a house held by the Council for any other purpose by an agreement and the recovery of any rent, mesne profits, damages or other sum claimed by the Council in respect of the occupation by any person of such a house;</p> <p style="padding-left: 20px;">(ii) all necessary steps for recovery of all arrears (whether Capital or interest), due to the Council in respect of any mortgage granted by them and secured on residential property, including the appearance before the Registrar of the County Court;</p> <p style="padding-left: 20px;">(iii) recovery of debt and generally on other matters before the County Court and any other Courts of competent jurisdiction.</p> <p><u>Representation in all other forms of judicial body or process</u></p> <p>(a) To represent the Council in order to conduct proceedings and act as advocate in connection with any tribunal, panel, board or other judicial or quasi-judicial process.</p>	MO/HOL or appropriate officers designated by the MO/HOL in writing
FR3/4	<p><u>Representation in all other forms of judicial body or process</u></p> <p>(a) To represent the Council in order to conduct proceedings and act as advocate in connection with any tribunal, panel, board or other judicial or quasi-judicial process.</p>	MO/HOL or appropriate officers designated by the MO/HOL in writing
FR3/5	Council Tax Deceased Chargepayers	DoSCS subject to a report on exercise of such

FINANCE & RATING		Delegated to
	Not to pursue small debts from the executors of deceased Council taxpayers where the likelihood of recovery of the amount involved was neither worthwhile nor realistic.	discretion via the Members' Newsletter.
<b>FR4</b>	<b>Grants &amp; Loans</b>	
FR4/1	<u>Ex-gratia payments for financial loss</u> To make ex-gratia payments, without prejudice, or admission of any liability or responsibility on the part of the Council, in settlement of claims submitted by persons where satisfactory evidence of financial loss was shown to exist, and there was reasonable connection between the incident rise to the claim and some action or inaction by the Council not amounting to a legal liability.	CE together with DoSCS, subject to the concurrence of Chair of Finance and Resources Committee or in his absence the Vice Chair for amounts in excess of £500.
FR4/2	To approve interest bearing loans (at no cost to the Council).	DoSCS following consultation with the Chair and V.Chair of Finance and Resources Committee and subject to prior notification to all Members of such applications.
<b>FR5</b>	<b>Borrowing and Banking</b>	
FR5/1	Bonds, Mortgages etc. (i) Register of Bonds, Mortgages and other loans; (ii) To deal with all matters relating to borrowing and leasing arrangements (including negotiations); (iii) to issue under Para 2 Schedule 13 L G Act 1972 and Regs made thereafter, one to five years Bonds up to the max amount permitted, and to:- (a) determine price of issue and rate of interest; (b) approve the organisations by whom and the means by which the issue is to be made; (c) settle any further detailed requirements for the issue of the Bonds; and (d) approve and sign on behalf of the Council any necessary documents to give effect to the above.	DoSCS DoSCS  DoSCS subject to report on any action concerning (ii) and (iii) before being made to the Finance and Resources Committee.
FR5/2	<u>Indemnity</u>	

FINANCE & RATING		Delegated to
	Signing an indemnity to the Council's designated Bankers acknowledging Council's liability on any instrument (all orders for payment not exceeding £500 on open cheques and £10,000 on crossed cheques).	DoSCS
FR5/3	<u>Overdraft</u> To incur a bank overdraft up to figure permitted from time to time under Agreement between Committee of London Clearing Bankers and Local Authority Associations.	DoSCS subject to a report on whether any action is being made via the Members' Newsletter.
<u>FR6</u>	<u>Estimates</u>	
FR6/1	<u>Virement Policy</u> (1) The Finance and Resources Committee or Committee may divert estimates from one heading of approved revenue estimates to another heading within its control provided that:- (a) No change in Council policy is implied; (b) no variation is made in the staff establishment without the approval of the Finance and Resources Committee and the Council; (c) no increase in the Council's future annual charges to Council Tax Payers or tenants will arise; (d) approval of Finance and Resources Committee (up to £200,000) or Council (over £200,000) is obtained where the diversion exceeds £30,000.	Finance and Resources Committee and Council
	(2) Authority to approve diversions of amounts provided under a service heading of approved Revenue estimates to another purpose where amount does not exceed £30,000 provided:- (a) no change in Council Policy is implied; (b) no variation is made in the establishment of employees except with the approval of the Finance and Resources Committee and the Council; (d) no increase in the Council's future annual charge to Council Tax payers or tenants will arise.	CE or DoSCS
FR6/2	<u>Leasing</u>	



	<b>FINANCE &amp; RATING</b>	<b>Delegated to</b>
	Vehicles plant and equipment (Standing Orders Waived):- (a) Authority to decide which items in estimates are appropriate for acquisition under leasing arrangements; (b) Authority to select companies to be invited to tender and to accept the most advantageous tenders in connection with such leasing; (c) Authority to enter into any Agreement necessary to give effect to the above.	(a) CE in consultation with DoSCS (b) CE in consultation with DoSCS (c) CE and such other Officers as are authorised by the CE subject to a report on any action taken being made to the Finance and Resources Committee/Asset and Enterprise Committee
<b>FR7</b>	<b>Charities</b>	
FR7/1	Proper Officer Proper Officer in who shall vest the powers with respect to Charities described in S210 L G Act 1972.	CE
<b>FR8</b>	<b>Application for Discretionary Rate Relief and Village Shop Rate Relief</b>	
FR8/1	To determine applications for Discretionary Rate Relief and Village Shop Rate Relief in accordance with the criteria adopted by the Council.	HoCS subject to consultation with the Chair and Vice-Chair of the Finance and Resources Committee and prior notification to all Members of the schedules of applications concerned.
<b>FR9</b>	<b>Grants to Voluntary Organisations</b>	
FR9/1	To determine applications for discretionary grants to voluntary organisations.	HoBHSL subject to consultation with the Chair of Community Committee and prior notification to all Members of the Schedules of applications concerned.

HIGHWAYS			
HY1/1	<p><u>Civil Parking Enforcement</u></p> <p>(i) Authority to implement and operate civil parking enforcement.</p> <p>(ii) To exercise discretion and for the avoidance of doubt to rescind parking charge notices in respect of mitigating circumstances put forward by objectors to penalty charge notices having due regard to the Council's policies and procedures for parking enforcement.</p> <p>(iii) Authority to write off Penalty Charge Notices limited to £750 in line with Financial Regulation 18.5.</p> <p>(iv) Authority to grant dispensations in respect of Residents Parking schemes and other waiting restrictions.</p>	<p>CE following consultation with the Chair of the H&amp;PP</p> <p>CE, HoSS, Parking Manager or officer nominated by him/her</p> <p>CE, HoSS, Parking Manger or officer nominated by him/her</p> <p>CE, HoSS, Parking Manger or officer nominated by him/her</p>	
HY2	<b>Works etc in/adj Highway</b>		
HY2/1	<p><u>Local Government (Miscellaneous Provisions) Act 1976</u></p> <p>To exercise the Council's powers contained in the following sections: S25 &amp; S26</p> <p>(Dangerous excavations on land accessible to the public and authority to enter land)</p> <p><b>Street Numbering and Naming</b></p>	CE	
HY3			
HY3/1	<p><u>Naming of streets</u></p> <p>(appropriate Parish Council to be consulted)</p> <p>(S27, 18 &amp; 19 <u>Public Health Act 1925</u>)</p>	CE	
HY3/2	<p><u>Number or re-number buildings</u></p> <p>(S64 &amp; 65 Town Improvement Clauses Act 1847)</p>	CE	
HY3/3	<p><u>Road Names</u></p> <p>To object as appropriate to future road naming proposals for the District.</p>	CE	

HIGHWAYS			
HY4	<u>Private and New Street Works</u>		
HY4/1	ECC Acts – New Streets Authorise service of Notices.	CE	
HY5	<u>Contracts, Tenders etc</u>		
HY5/1	Annual Contracts Acceptance of Annual Tenders for supply of stores, goods and minor highway facilities.	CE	
HY5/2	<u>Commercial and Industrial Waste</u> 1. To determine the charges for the collection of commercial and industrial waste where the fixed charge is not appropriate. 2. To adjust charges for bulk container emptying to take account of external charges.	HoSS and DoSCS HoSS	
<b>HOUSING</b>			<b>Delegated to</b>
HO1	<u>Lettings</u>		
HO1/1	Redecoration of Council dwellings Prior to re-letting Authority to grant a rent free period (to max of 4 weeks or equivalent decoration voucher) to new tenants undertaking decorations.	HoH	
HO1/2	Mutual Exchanges To determine Mutual Exchange applications	HoH	
HO1/3	<u>Selection of Tenants – Housing Register and Transfer List</u> (i) Authority to approve tenants for rehousing from the Housing Register and Transfer List in accordance with the Council's published Allocations Policy; (ii) To determine exceptional cases to the policy;	HoH HoH in consultation with Chair & Vice Chair of Housing and Health Committee	

HOUSING		Delegated to
HO1/4	Sheltered Housing for Non-Elderly Applicants To make allocation to applicants considered appropriate.	HoH
<b>HO2</b>	<b>Rents and Charges</b>	
HO2/1	Heating Charges Council Housing – Where heating and hot water supplied from a communal source: (1) Authority to increase heating charges in line with further price rises. (2) Authority to write off any marginal differences at the end of each financial year.	(1) DoSCS in consultation with Chair of Housing and Health Committee (2) DoSCS
HO2/2	<u>Rent arrears</u> (1) Signing of Notices to Quit and of Seeking Possession. (2) To authorise evictions once orders for possession have been obtained.	(1) HoH (2) HoH following consultation with the Chair and Vice Chair of the Housing and Health Committee together with the Leader and Deputy Leader of the Council and relevant Ward Members.
HO2/3	Rent rebates and allowances Schemes (Social Security Act 1986) Authority to back date (max 12 months) rent rebate and housing benefit allowance applications in appropriate cases.	DoSCS
HO2/4	All rent arrears cases To initiate action, use the services of the Council's Bailiffs and to instruct the MO/HOL.	HoH
HO2/5	<u>Leasehold Service Charges</u> To initiate action, including instructions to MO/HOL to recover leasehold service charge arrears including forfeiture of lease and recovery of possession.	HoH

HOUSING		Delegated to
<b>HO3</b>	<b>Squatters/Trespassers</b>	
HO3/1	<u>Legal Proceedings</u> Authority to take all necessary action leading to issue by Court of Warrant of Possession.	MO/HOL subject to action being reported on the Members' Newsletter.
<b>HO4</b>	<b>Shops</b>	
HO4/1	<u>Housing Estate Shops</u> Rent Reviews – authority to negotiate and settle as they become due.	SAM/MO/HOL subject to any action taken being reported on the Members' Newsletter.
HO4/2	<u>Shop Leases</u> (1) Power to approve future applications for consent to the assignment of shop leases where no change in trade is proposed. (2) To approve the change of use of Council owned shops in accordance with Planning and other Policies subject to consultation with adjoining Council tenants.	SAM SAM following consultation with the Chair and Vice-Chair of the Housing and Health/Assets and Enterprises Committees.
<b>HO5</b>	<b>Housing the Homeless</b>	
HO5/1	<u>Variation of Charges</u> Authority to vary the charges according to any future changes in the levels of Social Security benefits.	DoSCS
HO5/2	<u>Temporary Assistance</u> "Intentionally Homeless" assistance with temp accommodation beyond 28 days – authority to authorise further action (so as to ensure that the actual period for which temp. accommodation is made available is determined by reference to the particular circumstances of each case in accordance with the Act).	HoH

HOUSING		Delegated to
HO5/3	<p><u>Temporary Accommodation for Homelessness – Private Sector Leasing Arrangements</u>            To negotiate arrangements with another agency or agencies to secure temporary homes for the homeless, on the basis that the accommodation is located as close as possible to or within the Borough and the cost is substantially less than for bed and breakfast accommodation.</p>	HoH
HO5/4	Determine applications for assistance under Part VII of Housing Act 1985 (Housing The Homeless)	PHO(N)
HO5/5	<p>Review of Homeless Decisions            Determine applications for review of decisions made under Part VII of Housing Act 1985</p>	HoH
<b>HO6</b>	<b>Council House Sales</b>	
HO6/1	<p>“Right to Buy” (Housing Act 1985)            (1) to deal with Notices claiming and responding to right to buy;            (2) to deal with Notices relating to purchase price, right to a mortgage and deferred completion;            (3) to declare rates of interest to be charged on all variable interest loans including those to which S438 of the Act applies;</p>	1) HoH 2) HoH 3) DoSCS
<b>HO7</b>	<b>Housing Advances</b>	
HO7/1	<p>Recovery of mortgage arrears            To authorise the commencement of Court proceedings for recovery of mortgage arrears, subject to the Chair of the Housing and Health Committee being informed if it becomes necessary to bring a case before the Courts.</p>	HoL subject to the concurrence of the Chair of Housing and Health and Finance and Resources Committees, or in his/her absence, the Vice Chair
<b>HO8</b>	<b>Tenancy &amp; Estate Management</b>	
HO8/1	<u>Tenants Improvements</u>	HoH

	<b>HOUSING</b>	<b>Delegated to</b>
HO8/2	Determination of applications from tenants for right to improve Service of Notices pursuant to S83 of the Act (proceedings for possession on termination) and S102 (variation of terms of secure tenancy).	HoH
HO8/3	Determine applications to succeed to tenancy	HoH
HO8/4	Determine appeals against repossession action for demoted tenancies or introductory tenancies	HoH
	<b>LICENSING</b>	
LI	<b>Licensing</b>	
LI/1	<u>House to House Collection</u> (S2 House to House Collections Act 1939) (1) To grant a licence. (2) To refuse and/or revoke a licence.	1 & 3) The HoBHSL or duly authorised nominees 2) & 4) Licensing Committee in respect of applications which the HoBHSL and duly authorised nominees considers should be refused, except in cases of an urgent refusal which shall be after consultation with the Chair or Vice Chair of the Committee.
LI/2	<u>Street Collections</u> (S5 Police Factories (Misc Provisions) Act 1916) - (3) To grant. (4) To refuse permits in accordance with the Street Collection Regs adopted by the Council.	
LI/3	<u>Riding Establishments</u> (1) Issue of licences in accordance with recommendations of Veterinary Surgeon's Reports. (2) to refuse and revoke a licence.	The HoBHSL or duly authorised nominees Licensing Committee in respect of applications which the HoPD/HoBHSL considers should be refused, except in cases of an urgent refusal which shall be after consultation with the Chair or Vice Chair of the Committee.
LI/4	Public Transport Services Lodging of objection with Traffic Commissioners (if insufficient time for Licensing Committee consideration).	HoBHSL in consultation with Chair or Vice Chair for Licensing Committee

<b>LICENSING</b>	
LI/5	<p><u>Dogs – Breeding (The Breeding of Dogs Act 1973)</u>            1) Authority to issue licences in accordance with recommendations of Veterinary Surgeon's report in each case.            2) to refuse and revoke a licence.</p>
LI/6	<p><u>Dangerous Wild Animals Act 1976</u>            1) to grant or determine (subject to conditions and to satisfactory reports by a Veterinary Surgeon or practitioner and to no adverse report by the police or fire authority), licences for the keeping of dangerous wild animals as defined by the Act or any subsequent Order made by Sec of State.            2) to authorise a Veterinary Surgeon or practitioner or other such person pursuant S3 of the Act, to inspect the premises where any animal will normally be held and animal or other thing found there.            3) to vary or revoke any condition attached to the licence, subject to the provisos contained in S1 (9) of the Act.            4) to refuse or revoke licenses.            5) to authorise action under S4 of the Act to seize, destroy or detain an animal and recover the cost.</p>
LI/7	<p><u>Animal Boarding Establishments Act 1963</u>            1) To grant a licence on application subject to certain conditions.            2) May authorise an officer or Veterinary Surgeon or practitioner to inspect the premises.            3) To refuse or revoke a licence.</p>



LICENSING			
LI/8	<p><u>Scrap Metal Dealers –</u></p> <ol style="list-style-type: none"> <li>1) <u>To grant a registration</u></li> <li>2) <u>Authorise officers to maintain register</u></li> <li>3) <u>To institute legal proceedings against individuals failing to register</u></li> </ol>		<p>1&amp;2) The HoBHSL or duly authorised nominees</p> <p>3) HoBHSL</p>
LI/9	<p><u>Pet Animals Act 1951. (Pet Shops)</u></p> <ol style="list-style-type: none"> <li>1) To grant a licence on application subject to certain conditions.</li> <li>2) May authorise an officer or Veterinary Surgeon or practitioner to inspect the premises.</li> <li>3) To refuse or revoke a licence.</li> </ol>		<p>1&amp;2) The HoBHSL or duly authorised nominees</p> <p>3) Licensing Committee considers should be refused, except in cases of an urgent refusal which shall be after consultation with the Chair or Vice Chair of the Committee.</p>
LI/10	<p><u>Caravan Sites and Control of Development Act 1960 – exercise of Powers under the Act</u></p> <ol style="list-style-type: none"> <li>1) To grant a licence on application subject to certain conditions.</li> <li>2) To refuse or revoke a licence.</li> </ol>		<p>1) The HoBHSL or duly authorised nominees</p> <p>2) Licensing Committee considers should be refused, except in cases of an urgent refusal which shall be after consultation with the Chair or Vice Chair of the Committee.</p>
LI/11	<p><u>Control of Sex Establishments Local Government (Misc Prov) Act 1982.</u></p> <ol style="list-style-type: none"> <li>1) Delegation of Powers contained in Sch 3.</li> <li>2) Power to authorise an Officer of the Council to exercise powers of entry and inspection.</li> </ol>		<p>1) Licensing Committee</p> <p>2) HoBHSL or duly authorised nominees</p>
LI/12	<p><u>Control of Street Trading Local Government (Misc Prov) Act 1982.</u></p> <ol style="list-style-type: none"> <li>1) Delegation of powers contained in Schedule 4.</li> <li>2) Officer responsible for administering those powers and recommending action.</li> <li>3) To determine applications for street trading consents and to issue such consents</li> </ol>		<p>1) to 3). HoBHSL or duly authorised officers</p>

LICENSING			
	with appropriate conditions, including positioning and type of stalls. 4) To institute legal proceedings against individuals trading without the appropriate street trading consent or in prohibited streets.		4) HoBHSL or duly authorised officers
LI/13	<u>Local Government (Misc Prov) Act 1982. Registration of persons carrying out Acupuncture, Tattooing, Ear Piercing and Electrolysis</u> 1 To grant a registration 2 Officer authorised to maintain the Register and issue certificates.		1) HoBHSL or duly authorised nominees 2) HoBHSL or duly authorised officers
LI/14	<u>Hackney Carriages</u> (a) approval of design and content of exterior advertising; (b) refusal of same.		HoBHSL, Principal Licensing Officer or duly authorised nominees
LI/15	<u>Hackney Carriages, Private Hire Vehicles, Drivers and Operators</u> Power to:- (1) To issue licences. (2) To suspend licences. (3) To revoke licences. (4) To refuse licences. (5) To waive and/or vary pre-licensing conditions to the granting of licences and, conditions attaching to any licence. (6) To consider Hackney Carriage Fares for amendments from time to time.		1) & 2) HoBHSL or duly authorised officers 3),4),5)&6) Licensing Committee in respect of applications which the HoBHSL/PLO considers should be refused, 2) HoBHSL or duly authorised officers
LI/16	<u>Local Government (Miscellaneous Provisions) Act 1976</u> <u>Licensing of Private Hire Vehicles, Drivers &amp; Operators</u> Institution of legal proceedings against owner(s) for using, driving and operating a hackney carriage and / or private hire vehicle within the Brentwood Borough without being licensed for those purposes by the Brentwood Borough Council, subject to the		HoPD/HoBHSL

LICENSING			
	MO/HOL being satisfied with the evidence.		
LI/17	<p><u>Formal Warnings – Hackney Carriage and Private Hire Licences</u></p> <p>1. To issue formal written warnings to licence holders who accrue nine penalty points on their DVLA driving licences provided that the total of nine penalty points is reached in increments of no more than three and in periods longer than two years.</p> <p>2. Applying the principles contained in Section 28 Road Traffic Offenders Act 1988 and to deal with the non production of documents subject to the following guidelines:</p> <p>(1) On the first occasion a warning letter shall be sent.</p> <p>(2) On the second occasion a formal caution will be given (if an individual does not accept a caution a report is made to Licensing Committee).</p> <p>(3) On the third occasion, proceedings will normally be instituted subject to the MO/HOL being satisfied as to evidence.</p> <p><u>Zoo Licensing Act 1981</u></p> <p>1) to grant or determine subject to satisfactory report by a veterinary surgeon or practitioner and to no adverse report by the police or fire authority.</p> <p><u>Unlawful Parking on Taxi Ranks</u></p> <p>To take appropriate action such as the issue of fixed penalty notices.</p> <p><u>Registration of Motor Salvage Operators Vehicle Crime Act 2001</u></p> <p>(1) To determine application for registration of motor salvage operators where there is no impediment to registration.</p> <p>(2) Refusal of registration.</p> <p>(3) Authorise officers to maintain register.</p> <p>(4) To institute legal proceedings against individuals failing to register.</p>	<p>HoBHSL or duly authorised officers</p> <p>HoBHSL or duly authorised officers</p> <p>HoBHSL or duly authorised nominees HoPD/HoBHSL</p> <p>1) HoBHSL or duly authorised nominees</p> <p>HoPD/HoBHSL/PLO or duly authorised nominees</p> <p>1, 3 &amp; 4) HoBHSL or duly authorised officers</p> <p>Licensing Committee in respect of applications which the HoPD/HoBHSL/ Principal Licensing Officer considers should be refused.</p>	
LI/20			

<b>LICENSING</b>	
LI/21	<p><u>Licensing Act 2003</u></p> <p>(1) Grant an application for a Personal Licence if no objection is made.</p> <p>(2) Grant an application for premises licence/club premises certificate if no relevant representative is made.</p> <p>(3) Grant an application for a provisional statement if no relevant representation is made.</p> <p>(4) Grant an application to vary premises licence/club premises certificate if no relevant representation is made.</p> <p>(5) Grant an application to vary designated premises supervisor if no objection is made.</p> <p>(6) Request to be removed as a designated premises supervisor.</p> <p>(7) Grant an application for transfer of premises licence where there is no police objection.</p> <p>(8) Grant an application for interim authority where there is no police objection.</p> <p>(9) Determine whether a representation is irrelevant, frivolous, vexatious etc.</p> <p>(10) To decide that a hearing is not required where all parties agree.</p> <p>(11) To process Temporary Event Notices.</p>
	HoBHSL or duly authorised nominees.
LI/22	<p><u>Gambling Act 2005</u></p> <p>(1) a) Grant an application of or variation to a premises licence if no relevant representation is made;</p> <p>b) Grant an application for provisional statement if no relevant representation is made;</p> <p>c) Grant an application for transfer of premises where there is no objection;</p> <p>d) Determine whether a representation is relevant;</p> <p>e) Decision to object when licensing authority is the relevant authority;</p> <p>f) considering the application;</p> <p>Determination of objection to temporary use notice.</p>
	HoBHSL or duly authorised nominees.

<b>LICENSING</b>			
	(2) Determine applications for registration of society lotteries. (3) Determine applications for gaming machine permits, provided any new application results in four or less machines in any premises.		
<b>PARKS &amp; OPEN SPACES</b>			<b>DELEGATED TO</b>
<b>PO1</b>	<b>Allotments</b>		
PO1/1	Allotments – non cultivation Authority to serve Notices of re-entry for non-cultivation and for non-payment of rent when requested by HoPD.		MO/HOL or appropriate officers designated by the MO/HOL
<b>PO2</b>	<b>Damage, Trespass etc</b>		
PO2/1	Public Open Spaces – Riding of Motorcycles Authority to take action, including the institution of proceedings on all public open spaces within the Borough.		HoPD, MO/HOL subject to any action taken being reported on the Members' Newsletter
PO2/2	"No Ball Games" Signs To authorise the erection of "No Ball Games" signs where he considered it to be justified on grounds of road safety.		HoPD, subject to prior consultation with Chair or Vice Chair of the Community Committee.
<b>PO3</b>	<b>Events, Lettings, etc.</b>		
PO3/1	Sponsorship and Advertising of Council initiatives/projects/activities by local industry and commerce To take appropriate action.		CE subject to prior consultation with Chair or Vice Chair Finance and Resources Committee or . Chair or Vice Chair of the Assets and Enterprise Committee

	PARKS & OPEN SPACES		DELEGATED TO
PO3/4	<p><u>Brentwood Centre Arena Project</u> Rates for advertising space at Brentwood Arena.</p>		<p>Following consultation with Chairs of Finance and Resources Committee and Community , Leader of the Council and Leader of the Opposition.</p>
<b>PO4</b>	<b>Commons – Management etc</b>		
PO4/1	<p><u>Curtis Mill Green – Encroachment</u> To take all reasonable appropriate action to protect the Common.</p>		<p>Subject to a report on action taken being made on the Members Newsletter</p>
PO4/2	<p><u>Clean Neighbourhoods and Environment Act</u> Authority to serve notices, institute legal proceedings, make orders or gain entry under relevant powers introduced by the Clean Neighbourhood and Environment Act 2000.</p>		<p>HoPD and/or officer nominated by him/her</p>

PERSONNEL MANAGEMENT			
PM1	<p><b>Statutory Duties &amp; Delegations</b> The CE, as the Head of the Paid Service, and being provided with such staff, accommodation and other resources as are, in his opinion, sufficient to allow him to perform his duties, has a statutory duty under S4(2) of the Local Government and Housing Act 1989 to:</p> <p>(a) co-ordinate the discharge of this authority's functions;  (b) determine the number and grades of staff required by the authority for the discharge of their functions;  (c) determine the organisation of the authority's staff; and  (d) determine the appointment and proper management of the authority's staff.  (e) to report, as he considers it appropriate to do so, on any of the matters listed above.</p> <p>In these respects, and in accordance with the Part 4.7 (Appointment of Chief Officers), and within the framework of prevailing employment legislation, it shall be deemed that such duties as identified in (a) to (d) inclusive above shall include the following duties and delegated authority as described in PM2 to PM15 inclusive.</p>	CE	
PM2	<p><b>Organisational Development</b></p> <p>To review and restructure the organisation of the authority's staff to enable the authority to discharge its functions in the face of legislative, policy and other requirements.</p>	CE subject to a report on any major changes to Finance and Resources Committee	
PM3	<p><b>Appointment, Recruitment &amp; Retention of Staff</b></p> <p>(i) To identify, negotiate and implement such contractual terms and conditions of employment as he considers appropriate for the recruitment and retention of staff;  (ii) To identify and implement procedures for recruitment and selection of staff as he considers appropriate, to include Member involvement in the selection process for the appointment of Chief Officers in accordance with the Act and SO46.</p>	CE, subject to a report on major changes to Finance and Resources Committee CE, subject to a report on major changes to Finance and Resources Committee	

<b>PERSONNEL MANAGEMENT</b>	
<p>(iii) To appoint such staff on permanent, fixed or temporary contracts as he considers appropriate, to include the offers of commitment contracts to staff whose retention would be valuable to the Council's service delivery.</p> <p>(iv) To engage casual workers and consultants, to include former staff where necessary, in individual and applicable circumstances as he considers appropriate.</p> <p>(v) To identify, implement and review a system of Performance Related Pay, as he considers appropriate, consistent with the particular needs of this Council, the cost of which shall be met from within existing budget provision.</p> <p>(vi) To consider the effects, costs and affordability of changes to National Agreements in all respects and take all appropriate action in respect of introducing such changes as he considers appropriate in the circumstances.</p> <p>(vii) To reaffirm the existing delegated authority and to confirm the practice in exercising the delegation whereby the appropriate value of benefits in kind may be included in any employees superannuable remuneration in accordance with the definition of remuneration as defined by the Local Government Pension Scheme Regulations and employment law.</p> <p>(viii) To finalise and maintain a list of politically restricted posts under Section 2 of Part I of the Local Government and Housing Act 1989 (the LGHA 1989) as amended by the Local Democracy, Economic Development and Construction Act 2009</p> <p>(ix) To ensure that the Council's recruitment policies and practices give effect to the principle of appointment on merit in accordance with Section 7 of the Local Government &amp; Housing Act 1989.</p> <p>(x) To monitor, maintain and review, and action as appropriate, the agreed scheme for payment of professional fees to all appropriate staff.</p> <p>(xi) To identify, negotiate, implement, monitor and review such code of conduct for staff as he considers appropriate and in accordance with any relevant legislation and codes of guidance.</p> <p>(xii) To agree with employees entitled to receive an essential user car allowance, an appropriate lump sum allowance in lieu of a mileage based allowance, or vice versa (except for Chief Officers, for whom any car allowance shall always be by lump sum).</p>	<p>CE, subject to a report on major changes to Finance and Resources Committee</p> <p>CE</p> <p>CE following consultation with Chair &amp; Vice Chair of Finance and Resources Committee</p> <p>CE in conjunction with respective Chief Officers and with the concurrence of the Chair of Finance and Resources Committee.</p> <p>CE</p> <p>CE/MO</p> <p>CE</p> <p>CE</p> <p>CE, subject to a report on action taken to be placed on the Members Newsletter</p> <p>CE</p>



<b>PERSONNEL MANAGEMENT</b>			
	<p>(xiii) To monitor, maintain and review agreed suitable leasing arrangements for vehicles as appropriate within approved overall budget provisions, including the detailed agreement to be made between the Council and its staff.</p> <p>(xiv) To monitor, maintain and review agreed Relocation Expenses Scheme as appropriate within approved overall budget.</p> <p>(xv) To monitor, maintain, review and action the agreed Property Purchase Assistance Scheme.</p> <p>(xvi) To implement the Equal Opportunities Policy ensuring compliance at a practical level in respect of the Council's employment procedures.</p>	<p>CE</p> <p>CE following consultation with Chair or Vice Chair of Finance and Resources Committee</p> <p>CE</p> <p>CE</p>	
<b>PM4</b>	<b>Staff Performance and Appraisals</b>		
	<p>(i) To identify negotiate and implement staff appraisal procedures for the setting and review of performance targets for individual staff and for staff groups, as he considers appropriate, and in accordance with any relevant legislation and codes of guidance.</p> <p>(ii) In respect of Chief Officers' performance to implement recommendations of the Review Board, following review of each Chief Officer's performance, in respect of</p> <p>(a) an award of additional increments where appropriate to reflect outstanding performance during the year;</p> <p>(b) an extension of the term of the Chief Officer's period of commitment to the service of the Council, with appropriate proportional adjustments to allowances etc; and</p> <p>(c) such other changes as may be necessary.</p> <p>(NB: The CE is not a member of the 'Review Board' for the purposes of his/her own review.)</p>	<p>CE</p> <p>CE, following consultation with the Leader of the Council and Chair of Finance and Resources Committee or in the absence of either the Deputy Leader of the Council or Vice Chairs of the Committee or as appropriate and report thereon to the Finance and Resources Committee.</p>	
<b>PM5</b>	<b>Staff Training and Development</b>		
	<p>(i) To identify, implement and review staff training and development programmes.</p> <p>(ii) To establish, review and maintain the Council's Career Development Scheme.</p>	<p>CE</p> <p>CE</p>	

<b>PERSONNEL MANAGEMENT</b>	
<b>PM6</b>	<p><b>Employee and Industrial Relations</b></p> <p>(i) To identify, implement and review procedures and machinery for the development and maintenance of effective employee and industrial relations.</p> <p>(ii) To identify, implement and review staff local agreements.</p> <p>(iii) To establish and maintain local staff consultation forum for respective staff groups, to include settling the practical make-up of the representation of staff sides of respective Consultation Forum on the basis of the relationship of the members of staff who are members of a union and those who were not members of a Union, and further to make appropriate arrangements for non-Union staff to elect their representatives, and that the operation of the Forum be in accordance with procedures to be established by the CE.</p> <p>(iv) To negotiate and settle general conditions of employment, salaries and payments etc., providing the cost thereof can be met from within the approved budget.</p>
	<p>CE</p> <p>CE</p> <p>CE</p> <p>CE subject to a report on any action taken to Members through the Members' Newsletter.</p>
<b>PM7</b>	<p><b>Grievance and Disciplinary Procedures</b></p> <p>(i) Discipline, to include suspension and dismissal, of all staff* is a matter for the CE through the exercise of the Council's disciplinary procedures, which are founded on the ACAS Code of Practice and incorporating provisions prescribed by National Conditions of Service and prevailing legislation.</p> <p>(ii) The act of suspension and/or dismissal may be delegated by the CE.</p> <p>(iii) Hearing and determination of any Appeal by any employee* against suspension, dismissal or relegation.</p> <p>* For clarity, disciplinary action in respect of the CE, MO/HOL and Section 151 Officer shall be in accordance with SO47 founded on and incorporating provisions prescribed by National Conditions of Service for Chief Executives, and Part II of the Local Authorities (Standing Orders) Regulations 1993 and other provisions contained in individual contracts of employment.</p>
	<p>CE</p> <p>CE following consultation with Chair &amp; Vice Chair of Finance and Resources Committee</p>

<b>PERSONNEL MANAGEMENT</b>	
<b>PM8</b>	<p><b>Terminations of Employment</b></p> <p>(i) To identify and negotiate with individuals and their representatives, and action all individual and collective terminations of employment made for economic, technical, organisational and disciplinary reasons, to include redundancies and early retirements either on grounds of efficiency of the authority's service or ill-health.</p> <p>(ii) To identify, negotiate and agree with individuals and their representatives termination terms (to include the exercise of maximum discretion in respect of terminations on grounds of redundancy and/or early retirement on the grounds of efficiency of the authority's service, and ill-health) within the legislative framework of prevailing compensation and superannuation regulations and other statutory provisions, and to implement accordingly.</p> <p>(iii) To extend sickness payments to employees as appropriate pending final reports from the Community Physician and conclude matters accordingly.</p> <p>(iv) To make an appropriate gratuity payment in accordance with Part 'K' of the Local Government Superannuation (Miscellaneous Provisions) Regulations 1987, S. 1. 293, or as amended, to any retiring long-serving employee who does not qualify for pension benefits arising from the Local Government Scheme.</p> <p>(v) To exercise discretion to pay a gratuity to long-serving employees for such period of service not covered by the Superannuation Scheme.</p> <p>(vi) To report annually the total sum paid if any in gratuities under the above delegation.</p> <p>(vii) To consider and agree as appropriate the exercise of discretions available under the provisions of the Local Government Pension Scheme Regulations 1997.</p>
<b>PM9</b>	<p><b>Employment Regeneration</b></p> <p>(i) To take all appropriate action to evaluate and bid for any additional resource allocation which may be available and/or to identify any local job regeneration initiatives which would benefit Brentwood's unemployed, its business community and its workforce.</p> <p>(ii) To take all necessary action to identify and submit any appropriate bids for Government or EU funding.</p>
	<p>CE subject to a report on major changes to Finance and Resources Committee</p> <p>CE following consultation with Chair &amp; Vice Chair of Finance and Resources Committee in respect of Heads of Service and above.</p> <p>CE following consultation with Chair &amp; Vice Chair of Finance and Resources Committee</p> <p>CE following consultation with Chair &amp; Vice Chair of Finance and Resources Committee</p> <p>CE following consultation with Chair &amp; Vice Chair of Finance and Resources Committee</p> <p>CE</p> <p>CE</p> <p>CE following consultation with Chair &amp; Vice Chair of Finance and Resources Committee</p> <p>CE following consultation with Chair &amp; Vice Chair of Finance and Resources Committee</p>

<b>PERSONNEL MANAGEMENT</b>			
	(iii) Advising on regeneration, economic development and enterprise initiatives.		CE
<b>PM10</b>	<p><b>Use of Council Offices</b></p> <p>(i) To authorise the use for meetings by such of those official bodies upon which the Council has direct representation for which another reasonably suitable meeting place is not normally available.</p> <p>(ii) To authorise any alterations to the Council Offices accommodation which he considers appropriate.</p> <p>(iii) To approve the use of the Council Offices Car Park for vehicle pollution days or other similar events subject to any conditions considered appropriate.</p>		CE  CE in consultation with Chair or Vice Chair of Finance and Resources Committee  CE
<b>PM11</b>	<p><b>Miscellaneous</b></p> <p>(i) Project Trident and Work Experience To make some form of payment to young people taking part in the above schemes subject to the Council having the necessary power to make such payments.</p> <p>(iii) Civic Car To select and acquire under the Council's leased car scheme or through outright purchase an appropriate vehicle for use as the Civic car at the end of each lease term.</p> <p>(iv) Essex Local Area Agreement To take all necessary and appropriate action to ensure the Council and the Brentwood Local Strategic Partnership contribute to the achievement of the agreed local LAA priorities. (Min 503, 15.2.2006)</p>		CE  CE subject to consultation with the Leader of the Council and the Mayor and to a report on action taken to Members  CE MO/HOL

PLANNING & BUILDING CONTROL		DELEGATED TO
PB1	<u>General</u>	
PB1/1	<p>Requisitions for Information – Generally</p> <p>(1) To serve requisitions for information where required as preliminary to the service of any notice or document under the service of any notice or document under the general provisions of the <a href="#">Town and Country Planning Acts</a>.</p> <p>(2) Prosecutions in all cases where enforcement action authorised and preliminary S.330 <a href="#">Town and Country Planning ACT 1990</a> Requisition Notice not complied with in whole or in part within one month from the date of service.</p>	<p>MO/HOL or appropriate officers designated by the MO/HOL</p> <p>MO/HOL subject to a report on any action taken being included in the Members' Newsletter.</p>
PB1/2	<p><u>Local Government (Miscellaneous Provisions) Act 1976</u></p> <p>(1) To serve notices purs S16 as the same may from time to time be amended requiring information as to the ownership, occupation or control of land, or interests in and in connection with any legal action or legal proceedings authorised by Planning and Development Committee; and</p> <p>(2) To authorise the institution of legal proceedings against any person who fails to comply with the requirements of any such notice or whom he believes to have knowingly or recklessly made a statement false in a material particular in response thereto.</p>	<p>MO/HOL or appropriate officers designated by the MO/HOL</p> <p>MO/HOL subject to a report on any action taken being made to the relevant Committee</p>

PLANNING & BUILDING CONTROL		DELEGATED TO
<b>PB2</b>	<b>Building Regulations</b>	
PB2/1	<p>(1) <u>Building Regulations – Generally</u> Determine all plans, notices and certificates deposited and submitted to the Council (including applications for relaxations and dispensation). Implement and serve as appropriate notices, all action necessary to ensure compliance with the Building Regulations, the Building (Approved Inspectors) Regulations, and the Building (Prescribed Fees) Regulations together with those sections of legislation which require determination where plans are deposited under the Building Regulations – Building Regulations, Building (Approved Inspectors) Regulations, Building (Prescribed Fees) Regulations, Building Act 1984, Essex Act 1987, Clean Air Acts.</p> <p>(2) Give and serve notices to revoke plans, and notices deposited under the Building Regulations and Building (Approved Inspectors) Regulations not commenced within 3 years – Building Act 1984, Essex Act 1987.</p> <p>(3) Serve notices requiring removal of danger or take emergency action to remove danger resulting from dangerous structures – Building Act 1984 (77&amp;78).</p> <p>(4) Serve demolition notices with or without conditions to those undertaken demolition work – Building Act 1984 (Sections 80-82).</p> <p>(5) Serve notices under the advance payments code Highways Act 1980.</p> <p>(6) Serve notices to obtain particulars of those persons with an interest in premises (Section 16 Local Government Miscellaneous Provisions Act 1976).</p>	HoPD
PB2/2	<u>Building Act 1984 – S.16</u> Passing of plans subject to conditions and modifications etc.	HoPD
PB2/3	<u>Section 77 &amp; 78 Building Act 1984</u> Proper officers for the purpose of Section 77 & 78 Building Act 1984, with powers to take measures in respect of dangerous buildings or structures.	Principal Building Surveyor Building Surveyor

	PLANNING & BUILDING CONTROL	DELEGATED TO
PB2/4	<u>Building Act 1984 – S.80-82</u> Control of Demolitions. Power to serve Notices pursuant to Section 81 Building Act 1984.	HoPD
PB2/5	Sections 35 & 36 Building Act 1984 Contravention of Building Regulations. Powers to instigate legal proceedings in respect of contraventions of Building Regulations and associated legislation.	HoPD & Officers authorised by them.
<b>PB3</b>	<b><u>Planning Applications</u></b>	
PB3/1	<u>Standard Planning Conditions and Reasons for Refusal</u> – Authority to make such minor amendments and additions as might be necessary in particular circumstances without significantly altering the overall effect of the condition or reason for refusal.	HoPD
PB3/2	<u>Approval, with or without conditions, of the matters detailed below</u> (1) Reserved matters, eg materials of construction landscaping details, enclosures etc for all developments, but excluding detailed plans following an outline permission. (2) Sewer connections of individual properties to existing sewers. (3) Cesspools and septic tanks which require planning permission.	HoPD subject to the Officer placing before Members those applications under 2 & 3 which he considers could be refused or which appear to him/her contentious or where a letter of objection has been received
PB3/3	(i) Amendments to approved plans Power to accept and agree to minor amendments to approved plans, including alterations to elevations and materials and minor re-siting of buildings, where it is concluded that the minor amendments are insignificant and have no greater impact on neighbouring residents than the approved scheme. In such cases, the decision to approve such amendments shall be reported on the Weekly Report for Members' information.	HoPD

	PLANNING & BUILDING CONTROL	DELEGATED TO
	<p>In all other cases, a planning application will be required and this will be dealt with in the normal manner through the Weekly Report system or by way of report to the Planning and Development Committee.</p> <p>(ii) Notification of Planning Applications</p> <p>Notification, and where appropriate, re-notification to neighbours in relation to submitted planning applications shall be at the discretion of the Planning Assistant concerned, such discretion to be exercised in a manner which follows the guidance contained within Circular 15/92 relating to "Publicity for Planning Applications".</p> <p>Parish Councils shall be notified of all planning applications submitted within the area of their Parish Council, and advised of any amended plans received during the course of processing such applications.</p>	HoPD
PB3/4	<p><u>Determination of repeat applications</u></p> <p>Authority to determine as refused any application materially the same as any proposals previously refused where an application is submitted within 12 months of original refusal, subject to no policy changes or changes in circumstances.</p>	HoPD subject to a report on any action taken to Planning and Development Committee or included on the Weekly Report to Members.
PB3/5	<p><u>Requests for Information</u></p> <p>The exercise of the Council's powers under Articles 3 &amp; 5 of TCP (GPD) Order 1995 (power to request an applicant to furnish information, plans and drawings, to enable an application to be properly determined. Also enables the authority to insist on detailed plans being submitted where it is considered that an application ought not to be considered in outline).</p>	HoPD
PB3/6	<p><u>Determination of planning applications and the issue of decision notices, where Committee indicate that it wishes to refuse or approve (subject to conditions) a planning application but does not have available at the meeting the actual wording of the reasons/conditions.</u></p>	HoPD subject to the concurrence of the Chair. or in his/her absence the Vice Chair Planning and Development Committee, and any appropriate Ward Member(s), who were voting members of the Committee at the time the planning application was considered.



	PLANNING & BUILDING CONTROL	DELEGATED TO
PB3/7	<p><u>Delegation of certain applications</u>  Delegation, after prior notification to all Members of the Council and to every Parish Council, to issue Decision Notices in respect of all applications (not covered by other delegations) for planning permission, listed building consent, advertisement consent and consent to carry out works to preserved trees, with the exception of the following types of application:</p> <p>(a) All applications submitted by the Council or involving Council owned land;  (b) Those applications where, in the view of CPO, a full report directly to Planning and Development Committee for decision is required. CPO will take into account, inter alia, the following considerations in determining whether to report directly to Planning and Development Committee:</p> <ul style="list-style-type: none"> <li>• whether there are complex and finely balanced policy issues;</li> <li>• whether the development is of a particularly significant scale;</li> <li>• whether a significant amount of background needs to be set out for which a Weekly Report format would be unsuitable (e.g. where appendices to a report may be required).</li> </ul> <p>(c) Applications for Prior Approval of Telecommunications Development.  The above delegation is subject to:</p> <ol style="list-style-type: none"> <li>(i) the CPO recommended decisions being circulated (via the Weekly Report) to all Members of the Council and each Parish Council.</li> <li>(ii) the delegation in respect of any particular application being automatically withdrawn if any Member or Parish Council requests that it be referred for consideration by the Planning and Development Committee. Such notification must be received by the Planning Office prior to 12 noon on the date set out in the Weekly Report. Any referral received less than 5 full working days preceding a Planning and Development Committee will be considered at the next subsequent meeting of the Committee;</li> <li>(iii) in those cases where no referral to the Planning and Development Committee has been notified, the concurrence of the Chair and Vice Chair of the Committee (or their nominated substitutes) to each recommendation.</li> </ol>	HoPD

	<b>PLANNING &amp; BUILDING CONTROL</b>	<b>DELEGATED TO</b>
	Where representations are received after publication of the Weekly Report copies will be forwarded to the appropriate Ward Member(s)*. Where it has not been possible to do so, the Chair and Vice Chair will be informed at the time their concurrence to the recommendation is sought. [*The 'appropriate Ward Member' is the Ward Member(s) who sit(s) on the Planning and Development Committee(or, in their absence, the other Member(s) for the ward) or, where the ward is not represented on the Planning and Development Committee, the Member(s) for that ward.]	
PB3/8	<u>Environmental Impact Assessment</u> To determine whether an Environmental Impact Assessment is required under the Town & Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 or any subsequent re-enacting legislation.	HoPD
PB4	<b>Public Authority Development</b>	
PB4/1	Neighbouring Authority Consultation – Local Plan etc. To respond to neighbouring authority consultations within the time limit for such consultations.	HoPD following consultation with Chair of the Planning and Development Committee and any appropriate Ward Member(s) , who were voting members of the Committee at the time the planning application was considered.
<b>PB5</b>	<b>Permitted Development</b>	
PB5/1	Determination of whether planning permission required Determination as to whether in any particular case any proposal constitutes "development" requiring planning permission.	HoPD in consultation with MO/HOL
PB5/2	Agricultural Permitted Development Rights To make all determinations as to whether the 'prior approval' of the Council is required for development affecting agricultural units above 5 hectares, pursuant to the Town and Country Planning General Development (Amendment) (No. 2) and (No. 3) Orders 1991.	HoPD following consultation with the Chair & Vice Chair of the Planning and Development Committee.

	PLANNING & BUILDING CONTROL	DELEGATED TO
<b>PB6</b>	<b>Stop Notices, Enforcement and Appeals</b>	
PB6/1	<u>Planning Appeal Procedure.</u> Written Reps, Informal Hearing or Public Inquiry – (Min. 741 8.1.75)	HoPD, subject to liaison with the Chair & Vice Chair of Planning and Development Committee in the case of particularly significant or contentious cases.
PB6/2	<u>Planning Enforcement Notices</u> Authority to add additional breaches of planning control to enforcement Notices authorised but not yet served. (Min. 837 16.3.77)	HoPD in consultation with Chair & Vice Chair of Planning and Development Committee and to inform Ward Members of any action taken
PB6/3	<u>Stop Notices and Enforcement Notices</u> Service of requisitions for Information for the purposes of S.330 TCP Act 1990. (Min. 413 28.9.74)	MO/HOL or appropriate officers designated by the MO/HOL
PB6/4	<u>Evidence</u> Authority to adduce evidence at Appeals not specifically referred to in the Decision Notices.(Min. 482 25.9.74)	MO/HOL/HoPD
PB6/5	<u>Entry to land</u> In respect of enquiries prior to enforcement matters being reported to Planning and Development Committee– Power to serve Notices of Intended Entry under S324 TCP Act 1990 in cases where access to land during the course of Prelimin. Invest. is refused. (Min. 664 9.2.83)	MO/HOL or appropriate officers designated by the MO/HOL
PB6/6	<u>Planning and Compensation Act 1991</u> (1) To issue Planning Contravention Notices pursuant to Sections 171C and 171D of Part VII of Town & Country Planning Act 1990.	MO/HOL or appropriate officers designated by the MO/HOL
	(2) To deal with representations made by a recipient of a Planning Contravention Notice (Section 171C (4) Town & Country Planning Act 1990).	MO/HOL or appropriate officers designated by the MO/HOL

	<b>PLANNING &amp; BUILDING CONTROL</b>		<b>DELEGATED TO</b>
PB6/6	<p><u>Planning and Compensation Act 1991</u></p> <p>(1) To issue Planning Contravention Notices pursuant to Sections 171C and 171D of Part VII of Town &amp; Country Planning Act 1990.</p> <p>(2) To deal with representations made by a recipient of a Planning Contravention Notice (Section 171C (4) Town &amp; Country Planning Act 1990).</p> <p>(3) To enter land specifically for enforcement purposes pursuant to Sections 196A 196B and 196C Town &amp; Country Planning Act 1990. (Min. 635, 15.1.92)</p>		<p>MO/HOL/HoPD</p> <p>MO/HOL or appropriate officers designated by the MO/HOL</p> <p>HoPD and all Officers authorised by him/her</p>
PB6/7	<p><u>Planning Contravention Notices</u></p> <p>Authority to prosecute in instances where there is a failure to respond to Planning Contravention Notice. (Min. 392 3.10.95)</p>		<p>MO/HOL or appropriate officers designated by the MO/HOL</p>
PB6/8	<p><u>Decisions to take enforcement action</u></p> <p>Delegation, after prior notification to all Members of the Council and to every Parish Council, to request the MO/HOL to take legal action in respect of Planning Control contravention, subject to the MO/HOL being satisfied with the evidence, and subject to the following:</p> <p>(i) the HoP&amp;D recommended decisions being circulated (via the Weekly Report) to all Member of the Council and each Parish Council;</p> <p>(ii) the delegation in respect of any particular case being automatically withdrawn if any Member or Parish Council request that it be referred for consideration by the Planning and Development Committee. Such notification must be received by the Planning Office prior to 12 noon on the date set out in the weekly Report. Any referral received less than 3 full working days preceding a Planning and Development Committee will be considered at the next subsequent meeting of the Committee;</p> <p>(iii) in those cases where no referral to the Planning and Development Committee has been notified, the concurrent of the Chair and Vice Chair of the Committee (or their nominated substitutes) to each recommendation.</p>		<p>HoPD</p>
<b>PB7</b>	<b><u>Building Preservation</u></b>		
PB7/1	<p><u>Temporary Listing – Building Preservation Notices</u></p> <p><u>Planning (Listed Buildings and Conservation Areas) Act 1990</u></p>		<p>HoPD/MO/HOL following consultation with the</p>

	<b>PLANNING &amp; BUILDING CONTROL</b>	<b>DELEGATED TO</b>
	To issue notices pursuant to Section 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990.	Chair & Vice Chair of Planning and Development Committee.
<b>PB8</b>	<b>Tree Preservation</b>	
PB8/1	Orders Authority to:- (1) Consider whether a TPO should be served; (2) To serve a TPO. Confirm without modification any TPO which is not opposed (3) To withdraw a TPO.	1) HoPD 2) MO/HOL or appropriate officers designated by the MO/HOL 3) MO/HOL or appropriate officers designated by the MO/HOL
PB8/2	Confirmation of Orders Power to confirm TPOs with or without modification in the light of objection.	Planning and Development Committee
PB8/3	Action to prevent felling Empowered to authorise necessary action to prevent felling.	MO/HOL in consultation with Chair & Vice Chair of Planning and Development committee
<b>PB9</b>	<b>High Hedges Complaints</b> To determine Complaints and to take all legal action on non compliance with a High Hedges Remedial Notice.	HoPD, following consultation with the Chair of the Planning and Development Committee and the prior notification through the High Hedges Delegation Decision List.
<b>PB10</b>	<b>Local Development Plan Working Group</b> Approve each stage of the preparation of the Local Development Documents.	HoPD in consultation with the Local Development Plan Working Group

PUBLIC HEALTH		DELEGATED TO
PH1	<b>General</b>	
PH1/1	<p><u>S16 Local Government (Miscellaneous Provisions) Act 1976. Requisitions for Information</u></p> <p><u>Local Government (Miscellaneous Provisions) Act 1976</u>            (1) To serve notices pursuant to <u>section 16</u> as the same may from time to time be amended requiring information as to the ownership, occupation or control of land, or interests in and in connection with any legal action or legal proceedings authorised by Licensing Committee; and</p> <p>(2) To authorise the institution of legal proceedings against any person who fails to comply with the requirements of any such notice or whom he believes to have knowingly or recklessly made a statement false in a material particular in response thereto.</p>	<p>HoBHSL or duly authorised 276 Officers</p> <p>HoBHSL in consultation with MO/HOL CE</p>
PH1/2	<p><u>Criminal Justice Act 1994</u>            To serve appropriate directions.</p> <p>Institute legal proceedings under the provisions of the Criminal Justice Act 1994 relating to unauthorised campers.</p>	<p>HoBHSL or duly authorised officers</p> <p>HoBHSL in consultation with MO/HOL</p>
PH1/3	<p><u>Loading Control Area – Sunday Trading Act 1994</u>            To determine an application for consent to load and unload earlier than 9am on a Sunday within a Loading Control Area.</p> <p><u>Authority for action under specified legislation</u>            To gain entry, serve appropriate notices, and carry out miscellaneous powers.</p> <p>To institute legal proceedings and carry out any miscellaneous powers in respect of the following legislation:-            Animal Boarding Establishments Act 1963            Animal Health Act 1981            Animal Health and Welfare Act 1984</p>	<p>HoBHSL or duly authorised officers</p> <p>HoBHSL or duly authorised officers</p> <p>HoBHSL or duly authorised officers</p> <p>HoBHSL in consultation with MO/HOL</p>

	PUBLIC HEALTH		DELEGATED TO
<p style="text-align: center;">Page 295</p>	<p>Animal Welfare Act 2006            Antisocial Behaviour Act 2003  <a href="#">Anti-social Behaviour, Crime and Policing Act 2014</a>            Brentwood Borough Council's Byelaws            Breeding and Sale of Dogs (Welfare) Act 1999            Breeding of Dogs Acts 1973 and 1991 (as amended 1999)            Building Act 1984            Caravan Sites Act 1968            Caravan Sites and Control of Development Act 1960            Charities Act 2006            Cinemas Act 1985            Clean Air Act 1993            Clean Neighbourhoods and Environment Act 2005            Control of Dogs Order 1992            Control of Pollution Act 1974            Criminal Justice &amp; Police Act 2001            Criminal Justice &amp; Public Order Act 1994            Dangerous Dogs Act 1991 (as amended 1997)            Dangerous Wild Animals Act 1976            Deer Act 1991            Defective Premises Act 1972            Disability Discrimination Act 1995            Dogs (Fouling of Land) Act 1996            Dogs Acts 1871            Environment Act 1995            Environmental Protection Act 1990 (As amended.)            European Communities Act 1972            Factories Act 1961            Food and Environment Protection Act 1985            The Food Hygiene (England) Regulations 2006 (as amended)            Food Safety Act 1990            Sunday Trading Act 1994 (As amended)</p>		

	PUBLIC HEALTH		DELEGATED TO
PH1/4	<p>Town Police Clauses Act 1847  Town Police Clauses Act 1889  Transport Act 1981  Transport Act 1985  Vehicles ( Crime ) Act 2001  Water Act 1989  Water Industry Act 1991  Wildlife and Countryside Act 1981  Zoo Licensing Act 1981.</p> <p><u>Food Safety Legislation</u>  To enforce relevant powers made under the European Communities Act 1972, Food Safety Act 1990, Food Hygiene (England) Regulations 2006, the Official Feed and Food Control (England) Regulations 2009, the General Food Regulations 2004, the Products of Animal Origin (Third Country Imports) (England) Regulations 2006, the products of Animal Origin (Import and Export) Regulations 1996 and any Regulations, Orders or Byelaws or any subsidiary legislation made under the above and any enactment amending or replacing the same.  (Min 479, 1.2.2006</p>		HoBHSL or duly authorised nominees
PH1/5	<p><u>Smoke Free Legislation</u>  To enforce relevant powers made under Part 1, The Health Act 2006, The Smoke-Free (Premises and Enforcement) Regulations Act 2006, The Smoke-Free (Exemptions and Vehicles) Regulations Act 2007, The Health Protection (Local Authority Powers) Regulations 2010, and The Smoke-Free (signs) Regulations Act 2007.</p>		HoBHSL or duly authorised nominees
PH1/6	<p><u>Dispersal of Groups Order</u>  <a href="#">Anti-social behaviour and Community</a>  The making of a Dispersal of Groups Orders under Section 30 of the Anti-Social Behaviour Act 2003 in respect of Brentwood Town Centre and Rayleigh Road, Hutton</p>		HoBHSL/HoPD



	<b>PUBLIC HEALTH</b>		<b>DELEGATED TO</b>
	<p><del>and any further Dispersal Orders for the Borough that might be identified by the Police. The exercise of all functions (including powers) under Anti-social Behaviour, Crime and Policing Act 2014</del></p>		
<b>PH2</b>	<b>Food &amp; Drugs</b>		
PH2/1	<p><u>Deer Act 1991</u> To exercise the powers under Section 10 &amp; 11 of the Deer Act 1991.</p>		HoPD/HOBHSL and/or his nominees
PH2/2	<p><u>Proper Officers: Public Health (Control of Diseases) Act 1984 (as amended)</u> <u>The Health Protection (Notification) Regulations 2010</u> <u>The Health Protection (Local Authority Powers) Regulations 2010</u> <u>The Health Protection (Part 2A Orders) Regulations 2010</u> To appoint consultants in communicable disease Control and other appropriately qualified individuals employed by the Health Protection Agency to act on behalf of the Council. (Min 193 15.9.2004)</p>		HoBHSL or duly authorised officers
<b>PH3</b>	<b>Control of Pollution</b>		
PH3/1	<p><u>Control of Pollution Act 1974 Part III</u>  1) to serve notices in relation to construction site noise. 2) to approve applications under S61. 3) to serve requisitions for information under S93 of the Act. 4) to exercise the powers granted by S91 (1) of the Act. 5) to approve the making of application for Warrants under S91 (2) of the Act.</p>		1) HoBHSL or duly authorised officers 2) /HoBHSL and all Officers authorised by him/her  2) HoBHSL or duly authorised officers 3) HoBHSL or duly authorised 4) HoBHSL
PH3/2	<p><u>Control of Pollution Act 1974 S13.</u> To serve Notices in accordance with the provisions of S13 (5) of the Act.</p>		HoBHSL or duly authorised officers
PH3/3	<p><u>Control of Pollution Act 1974 – Code of Practice on Noise from Audible Intruder Alarms 1982</u></p>		

	<b>PUBLIC HEALTH</b>		<b>DELEGATED TO</b>
	Power to determine applications for time extensions.		HoBHSL or duly authorised officers
PH3/4	<u>Dog Warden Scheme</u> To exercise as necessary the Powers contained in all relevant legislation.		HoBHSL in consultation with MO/HOL
PH3/5	<u>Public Health Act 1936, Highways Act 1980</u> <u>Refuse Disposal (Amenity) Act 1978</u> 1) All necessary action against persons shown to be damaging or obstructing by depositing material, or by burning, or such other actions, following upon the occupation by caravans of the highway verge or associated land. 2) Institute legal proceedings under the Above Acts.		1) HoBHSL or duly authorised officers 2) HoBHSL in consultation with MO/HOL
PH3/6	<u>Water Act 1989 – Water Quality</u> To exercise those duties and powers conferred under Sections 56, 57, 58 and 59 of the Water Act 1989.		HoBHSL or duly authorised officers
PH3/7	<u>Environmental Protection Act 1990 –</u> 1) Authority to take any appropriate action under Sections 6, 10, 12, 13, 14, 19 and 80 (1) of the Environmental Protection Act 1990. 2) To serve notices under Section 19, 23 and 80 (4) Environmental Protection Act 1990 requiring the provision of information and to institute legal proceedings that may be necessary for offences under the relevant parts of the Act, subject to him/her being satisfied with the evidence in each case. 3) To deal with stray dogs found in the area of the Authority pursuant to power contained in Section 149 Environmental Protection Act 1990.		HoBHSL or duly authorised officers HoBHSL or duly authorised officers HoBHSL in consultation with MO/HOL HoBHSL in consultation with MO/HOL
PH3/8	<u>Environment Act 1995</u> Power of Entry Section 108 (4) and 109 Environment Act 1995.		HoBHSL or duly authorised officers
<b>PH4</b>	<b>Health &amp; Safety at Work</b>		
PH4/1	Health & Safety at Work etc Act 1974		

	<b>PUBLIC HEALTH</b>		<b>DELEGATED TO</b>
	1 Inspectors under S19 of the Act and authority to exercise all powers in S20 (2). 2 Service of Notices in relation to the above functions.		1) HoBHSL or duly authorised officers 2) HoBHSL or duly authorised officers
PH4/2	<u>Health &amp; Safety at Work etc Act 1974. Power of Inspectors:-</u> 1) Appointed Inspectors (S19) a) to exercise powers of Inspector of Health and Safety specified in:- 1) S20, 21, 22, 25 & 39 of the Act; 2) any Health & Safety Regulation; 3) the provisions of the Act mentioned in Schedule 1 of the 1974 Act which are specified in the third column of that Schedule and of the Regulations, Orders or other instruments of a legislative character made or having effect under any provisions so specified, as in force from time to time. b) institute proceedings pursuant to S38 of the Act. 2) Authority to sign any instrument of appointment issued in accordance with the above Resolution or any future Resolution appointing an Inspector of Inspectors under the 1974 Act as the same may be from time to time amended.		1 to 3 HoBHSL or duly authorised officers   HoPD/HoBHSL or duly authorised officers HoPD/HoBHSL and all Officers duly authorised by him/her
PH4/3	<u>S19 Health &amp; Safety at Work etc Act 1974: appointment of Inspectors of Health and Safety entitled to exercise the powers of Inspectors</u> Specified in:- i) S20 of the Act; ii) Any Health & Safety Regs; iii) the provisions of the Act mentioned in Schedule 1 of the 1974 Act etc.		HoPD/HoBHSL and all Officers authorised by him/her
PH4/4	<u>Health &amp; Safety at Work etc. Act 1974 – Powers of Inspectors</u> (a) Powers of inspectors under Sections 20, 21, 22, 25 and 39 of the 1974 Act. (b) Powers of Inspectors under Sections 20, 21, 25 & 39. (c) Powers of Inspectors under Sections 20 & 25. (d) Powers of Inspectors under Section 20.		a) to d) HoBHSL or duly authorised nominees
PH4/5	<u>Health &amp; Safety (Enforcing Authority) Regulations 1989</u> Designated Officers to undertake the legal requirements in respect of the transfer of		HoBHSL or duly authorised officers

	<b>PUBLIC HEALTH</b>	<b>DELEGATED TO</b>
	premises under the above Regulations.	
PH4/6	<u>Expert Witness Authorisations under the Health and Safety at Work etc. Act 1974</u> To authorise a person or persons to enter any premises accompanied by an inspector duly appointed by the Council under Section 19 of the Act.	HoPD/HoBHSL and all Officers authorised by him/her
<b>PH5</b>	<b>House Improvement etc</b>	
PH5/1	<u>Housing Grants – Construction and Regeneration Act 1996</u> To approve and pay grants under Sections 34, 35 and 76 of the Act which meet the criteria and policies agreed by Members.	HoBHSL or duly authorised nominees
PH5/3	<u>Discretionary Housing Grants</u> To approve and pay any discretionary grants contained within the Council's Private Sector Renewal Policy.	HoBHSL or duly authorised nominees
<b>PH6</b>	<b>Protection of Buildings</b>	
PH6/1	<u>Local Government (Miscellaneous Provisions) Act 1982, S29 – Protection of Buildings</u> 1 Delegation of Powers. 2 Officer authorised to serve Notices and to arrange carrying out of works in appropriate cases.	1) HoPD and his nominees 2) HoPD (or duly authorised nominees)
PH6/2	<u>Housing Act 1985, As Amended</u> To serve Notices under Part X (Overcrowding), such authority to include the institution of legal proceedings, carrying out of works in default, should the Notices not be complied with, and the recovery of costs of any works in default.	HoBHSL or duly authorised nominees
PH6/3	<u>Housing Act 1985 – Powers of Entry</u> To enter premises for the purposes of Sections 197, 260, 319, 340, 395 and 600 Housing Act 1985.	HoBHSL or duly authorised nominees

	PUBLIC HEALTH		DELEGATED TO				
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**APPENDIX B**

**PROCESS FOR ELECTION OF MAYOR AND  
APPOINTMENT OF DEPUTY MAYOR**

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11/06/2014

## ~~APPENDIX B – PROCESS FOR ELECTION OF MAYOR AND APPOINTMENT OF DEPUTY MAYOR~~

~~1. The Mayor of the Borough shall be elected annually by the Council from among the Members and, unless he resigns or becomes disqualified, shall continue in office until his/her successor becomes entitled to act as Mayor.~~

~~2. The election of the Mayor of the Borough shall be the first item of formal business transacted at the Annual Council Meeting.~~

~~3. The Council at the Annual Meeting shall appoint a Member of the Council as Deputy Mayor of the Borough and, unless he/she resigns or becomes disqualified, shall hold office as Deputy Mayor until immediately after the election of a Mayor at the next Annual Council Meeting.~~

~~4. Notwithstanding that the election/adoption is a matter for the Council to decide, the following procedure shall be observed for the selection of Members for the offices of Mayor and Deputy Mayor, and their subsequent formal adoption at the Annual Council Meeting:-~~

~~(i) The Member appointed as Deputy Mayor is to be selected on the understanding that he/she will normally be elected as Mayor the following year.~~

~~(ii) (a) The nomination for Mayor will normally be that of the retiring Deputy Mayor.~~

~~(b) Should the Deputy Mayor stand down, lose their seat, or for any other reason there be a contest, the procedure for nominating and selecting the Mayor will be as for the Deputy Mayor, as set out below.~~

~~(iii) (a) Candidates for the Office of Deputy Mayor (and/or Mayor) and their proposer and seconder shall be Members of the Council.~~

~~(b) Each nomination and the candidate's consent to nomination shall be submitted in writing, signed by all three Members, to the Chief Executive from the first day of May each year.~~

~~(c) Nominations will close at NOON on the fifth day following ordinary local elections.~~

~~(d) Should any candidate or subscriber to a nomination cease to be a Member of the Council prior to the close of nominations, then that nomination shall be invalid. Nothing shall prevent a Member being re-nominated before the close of nominations.~~

~~(iv) (a) A list of validly nominated candidates shall be circulated, in confidence, to all Members of the Council at NOON on the fifth day following the ordinary local elections.~~

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~~(b) — A candidate may withdraw, by notice given in writing to the Chief Executive, by NOON on the seventh day following the ordinary local elections.~~

~~(v) — (a) — In the event of a contested selection for Deputy Mayor (and/or Mayor), postal ballot papers will be issued to all Members at NOON on the seventh day following the ordinary local elections.~~

~~— (b) — Ballot papers returned to the Chief Executive by NOON on the twelfth day following the ordinary local elections shall be kept in a secure place. Ballot papers received after this time will NOT be counted.~~

~~— (c) — Should all ballot papers be received by the Chief Executive earlier than the twelfth day, then the counting of votes shall take place as soon as practicable.~~

~~— (d) — The time and place for counting the votes shall be agreed by the Chief Executive in consultation with the Leader of the Council and the Leader of the main opposition Group.~~

~~— (e) — Candidates shall be permitted to attend the counting of votes.~~

~~(vi) — Voting shall be on the basis of “one Member, one vote” and the successful candidates identified by simple majority. In the event of an equality of votes for candidates, both names will be notified to Members of the Council, and the selection of the successful candidate shall be a matter for the Council to determine.~~

~~(vii) — In the event of the death of a candidate after the close of nominations, the ballot shall become null and void. A further selection timetable will be agreed by the Chief Executive in consultation with the Leader of the Council and the Leader of the main opposition Group.~~

~~(viii) — The formal adoption of the successful candidate(s) shall take place at the Annual Council Meeting.~~

~~(ix) — Provided the above procedures are followed, it will normally be the case that no further nominations will be made at the Annual Council meeting.~~





# Brentwood Local Planning Enforcement Plan

This Plan sets out how Brentwood will manage enforcement proactively in a way appropriate to the area of the Borough

March 2015

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## Executive Summary

- National Planning Policy Guidance (PPG) published on-line since March 2014 states, in paragraph 006 of the Section entitled Ensuring Effective Enforcement, that the preparation and adoption of a local enforcement plan is important because it:
  - Allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;
  - Sets out the priorities for enforcement action, and which will inform decisions about when to take enforcement action;
  - Provides greater transparency and accountability about how the local authority will decide if it is expedient to exercise its discretionary powers;
  - Provides greater certainty for all parties engaged in the development process
- This Local Enforcement Plan has been the subject of public consultation and report to the Planning and Development Committee and the full Council before adoption and is intended to meet these criteria. The plan sets out the objectives of the Planning Enforcement Service and the system and principles for the exercise of the relevant statutory powers. The local context in the plan includes the natural and historic environment. References to “the Act” mean the Town and Country Planning Act 1990, as amended. Other legislation specifically referred to relates to the Equalities Act 2010, Listed Buildings and Hedgerows and High Hedges.
- Brentwood Borough Council is the responsible Local Planning Authority for the enforcement of planning control within the Borough, apart from matters which are within the jurisdiction of the Essex County Council or the Essex and Southend Waste Authority. The County Council as the Highway Authority is responsible for trees, verges and hedges within highway control.
- There are a range of powers to be exercised in the public interest where a breach of planning control is under consideration. The planning system exists to protect the environment and ensure that development takes place in accordance with national regulatory requirements and is planned and managed to achieve social, economic and environmental objectives. This Plan seeks to promote procedures which will manage enforcement issues in an appropriate way for the Borough.
- Effective enforcement relies to a large degree on efficient and timely communication. Possible breaches of planning control; unauthorised works/activities/advertisements on land, buildings, trees or hedgerows are brought to notice by members of the public, Parish Councils, Council Officers in different departments and well as by Planning and Enforcement Officers. An efficient system needs the Council’s website to be a helpful source of reference and advice with a robust reporting system which is transparent

about the decisions taken. References to the PPG section “Ensuring Effective Enforcement” are given particularly in Appendix 1 which describes the options and procedures available to tackle possible and actual breaches of planning control in a proportionate way. The plan is published on the Council’s web site with an on-line form for reporting planning issues and enforcement complaints.

- The Plan sets out standards and proposed priorities restating and updating principles of good practice enforcement advocated by the Government but adapted to local circumstances. “Enforcing Planning Control: Good Practice Guide for Local Authorities” published in 1997 with Circular 10/97 remains in force, although the Circular itself has been withdrawn and replaced by PPG. Chapter 11 of this Guidance addresses prosecution of Enforcement notice offences. Other Good Practice Guidance for Untidy Land, High Hedges and Listed Building Prosecutions also remains current.
- Planning enforcement seeks to achieve compliance with planning control, affording contravenors where appropriate an opportunity to remedy any breach before the Council pursues using its statutory powers. A scoring chart is used for all investigations and this is published as part of the plan to show how decisions are generally reached on when it is expedient to take enforcement action. This statutory discretion is to be exercised in the public interest. The Act enables the Local Planning Authority to issue an enforcement notice when it appears to them “*expedient to issue the notice, having regard to the provisions of the development plan and any other material considerations*”. PPG (paragraph 003) states that a local enforcement plan is a material consideration when it is not part of the development plan.
- The exercise of this statutory discretion in a consistent proportionate response to planning harm or anticipated harm is aimed at securing public confidence in the planning system overall as advocated in the National Planning Policy Framework (NPPF). Through this Enforcement Plan, the Council seeks to promote a clear understanding of the role and function of Planning Enforcement, the exercise of discretion having regard to planning considerations, appropriate to the local context. In serious or intractable cases resort to the full range of legal powers may be required. It is hoped, however, that Brentwood’s Local Planning Enforcement Plan by clearly setting standards of consistent good practice, is helpful to residents and businesses alike in explaining priorities and practice details, and will contribute to avoiding uncertainty in an area which can be very technical and complex.

# 1 Introduction

## Functions of the Planning Enforcement Service

- 1.1 Effective enforcement of planning and associated legislation is necessary to protect the amenity and environment of the Borough of Brentwood. Investigation powers are entrusted to Local Planning Authorities (LPA) by Parliament to enable the LPA to protect the amenity and community safety of Borough residents from the adverse effects of undesirable developments and neglect of open land.
- 1.2 The primary role of enforcement is to investigate alleged breaches of planning control (including unauthorised development and non-compliance with conditions of a valid planning permission) and bring about remedial action where appropriate.
- 1.3 In the majority of cases, an alleged breach of planning control does not, by itself, constitute a criminal offence. Those cases which do constitute a criminal offence include unauthorised works to a listed building, breach of a Stop Notice, unauthorised works to protected trees and the display of unauthorised advertisements. Where a statutory notice is issued which requires steps to be taken (and appeal procedures are exhausted or time-barred) it is a criminal offence not to take those required steps.
- 1.4 Planning Permissions usually have conditions which are necessary to make the development acceptable in planning terms, for example incorporating approved plans or requiring specific works. If conditions are not complied with and not enforced, they become immune from enforcement after a period of years. Section 29 Infrastructure Act 2015 inserts into the Act a new Section 74A, whereby conditions requiring consent from the Council may be deemed discharged if an application has been made and the conditions in a Development Order made by the Secretary of State have been complied with. Sub-section (9) provides that the provisions will not be retrospective.
- 1.5 The whole of Brentwood lies within the Metropolitan Green Belt, and large parts of the Borough's countryside are considered to be areas of landscape value and important in terms of nature conservation. Liaison with the County Council and Parish Council is important in bringing possible breaches of planning to notice.

## Purpose of the Plan

- 1.6 The Local Enforcement Plan indicates a priority ranking for response to the areas of investigation within the Planning Enforcement Service. It is a principle of Planning Enforcement that action should be proportionate and consider human rights or equalities issues where these are engaged. The Enforcement Plan will be a material consideration in evaluating future breaches. Where an enforcement investigation is closed after concluding

that a planning application can resolve the complaint a time table needs to be set and advice given on the scope of any conditions. Where an enforcement notice is in force the Council may exercise its statutory discretion under Section 70C to decline to determine applications which would, if granted, allow development for which an enforcement notice is in force.

1.7 The Local Enforcement Plan outlines the administrative system for recording and progressing investigations and reporting arrangements. This includes a points scoring system to assess harm and sets a threshold for not taking further formal action. Records are to be maintained: The Good Practice Guide has advice at paragraph 12.6 and PPG at paragraph 009 refers to the statutory register of enforcement and stop notices maintained under Section 188 of the Act. Regulations made under Section 43 of the Local Audit and Accountability Act 2014, (the Openness of Local Government Bodies Regulations, 2014), require decisions made by officers which affect the rights of individuals to be recorded and published as soon as practicable after the decision. The record must contain:

- (a) The title of the decision making officer
- (b) The date the decision was taken
- (c) A record of the decision taken along with reasons for the decision,
- (d) details of alternative options considered and rejected
- (e) the name of any member of a relevant local government body who has declared a conflict of interest in relation to the decision

Such decisions are to be published on the website and the papers retained for inspection by the public for a period of at least 6 years. The record does not authorise the publication of confidential or exempt information.

1.8 This does not prevent a case by case assessment. Planning considerations must be the basis for the decision, and the investigating officer must judge and report on the impact of the unauthorised development the options available and time for compliance. The effect on business, and any relevant Public Sector Equalities duty are also relevant in recommending whether to enforce or take no action.

1.9 The Local Enforcement Plan includes appendices on trees, untidy land issues (Section 215 of the Act) and High Hedge complaints. These refer to more detailed guidance notes for which links are published on the Council's website. The context of the Borough explains the natural and historic environment. The Local Enforcement Plan is intended to guide the Planning Enforcement Service to address local concerns and local priorities.

## 2 Context

### Brentwood Borough Replacement Local Plan

- 2.1 The Brentwood Borough Replacement Local Plan (adopted 2005) is the Borough's current development plan. The plan provides a comprehensive statement of land use policies and proposals for the Borough. These Policies have been developed to protect and enhance the quality of both the built and natural environment and to provide for growth in the Borough. All decisions about the expediency of taking enforcement action will have regard to the planning policies adopted in the Brentwood Borough Replacement Local Plan.
- 2.2 The Council is required to produce a new Local Plan for the Borough which once adopted will supercede the current Replacement Local Plan and this process is underway.

### Historic Environment

- 2.3 The NPPF requires Local Planning Authorities to set out in their Local Plan a positive strategy for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other threats. In doing so we are asked to recognise that heritage assets are an irreplaceable resource, and conserve them in a manner appropriate to their significance.
- 2.4 Brentwood has 12 Scheduled Ancient Monuments, 13 Conservation areas, 1160 records of historic environmental assets. These include 512 Listed Buildings in the Borough, consisting of:
- 12 Grade 1 Buildings of national importance, including for instance Ingatestone Hall, the Priory Church of St Laurence, Blackmore which dates from the 12<sup>th</sup> century and has one of the finest 15<sup>th</sup> century timber bell towers in England and the Church of St. Mary the Virgin Great Warley, which is unique in possessing the only art nouveau-style interior anywhere in the world.
  - 27 Grade II\* Buildings of particular importance and more than special interest, including for instance The Old House and the White Hart Inn (Sugarhut) Brentwood, and the Windmills at Mountnessing and Mill Green
  - 473 Grade II Buildings which have statutory protection and warrant every effort being made to preserve them
- 2.5 The Planning Service maintains the statutory List of Buildings of Special Architectural or Historic Interest. The English Heritage website has a searchable database of the National Heritage List which includes detailed Listed Building descriptions.



- 2.6 The Local Enforcement Plan recommends prioritises Listed building enforcement with injunctions and prosecutions where harm is caused or apprehended, but also considers the positive changes introduced by the Enterprise and Regulatory Reform Act 2013 which took effect in 2014. This is in line with English Heritage recommendation the highest priority should be given to enforcement of heritage protection, while drawing a distinction between “Heritage Crime” where enforcement should be pursued in the public interest, and less serious breaches of the controls which can be managed under the new powers.
- 2.7 The changes now in force are:
- (i) Heritage Partnership Agreements which may grant listed building consents over a period up to 25 years
  - (ii) There is now provision for national and local Listed Building Consent Orders which grant consent for specified works
  - (iii) Certificates of Lawful Proposed Works to Listed Buildings
  - (iv) Better Definition of List description or Exclusion of Curtilage protection
  - (v) Certificates of Immunity from listing may now be granted without a planning application having been made
  - (vi) Abolishing Conservation Area Consent and addressing demolition within conservation areas by planning controls
- 2.8 In addition to consulting on the draft Enforcement Plan, it is proposed that details of these changes are sent to owners of all the listed buildings in the Borough.

## Natural Environment

- 2.9 Within Brentwood there are 3 SSSI's, 3 historic parks, 76 natural and semi natural sites, 1 local nature reserve, 147 sites identified as landscape wildlife importance in addition to 11 parks and 4 country parks. The quality of the environment depends heavily on trees, in both the urban and rural locations with particular issues in Conservation Areas. There are statutory responsibilities for making tree preservation orders (TPO) in section 198 of the Act, where it appears that it is expedient in the interests of amenity to do so. The Town and Country Planning (Tree Preservation) (England) Regulations 2012 allow immediate protection of trees under TPO's subject to the orders being served as required and confirmation within 6 months. Under section 210 of the Act, breach of a TPO is an offence with a maximum fine liability in the Magistrates' court of £20,000. In addition, if any tree protected by TPO or Conservation Area status is removed

## The National Planning Policy Framework

- 2.10 Enforcement is referred to in paragraph 207 of the National Planning Policy Framework (NPPF) 2012. The discretionary and proportionate nature of enforcement is stressed and it is suggested that local planning authorities should 'consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so'.

## The Planning Practice Guidance

- 2.11 The PPG at paragraph 007 sets out 14 options available to local authorities to tackle possible breaches of planning control in a proportionate way. These are described in the Planning Enforcement Toolkit at Appendix 1.

## Legal Context

- 2.12 The Council has the responsibility for taking whatever enforcement action is necessary within its area as the Local Planning Authority. A private citizen cannot initiate planning enforcement action. The Council has powers to investigate and take action to remedy breaches within the Town and Country Planning Act 1990 (as amended), The Planning (Listed Building and Conservation Areas) Act 1990, the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, the Localism Act 2011 and the Town and Country Planning (Tree Preservation) (England) Regulations 2012.
- 2.13 Enforcement provisions of the Localism Act 2011 extensively addresses tactics previously adopted by some developers that were seen as abuses, such as twin tracking an appeal against an enforcement notice and an application for retrospective approval. It also covers time limits on concealed breaches as well as penalties and increased powers in relation to fly-posting and graffiti.
- 2.14 The Council will consider the use of powers under the Proceeds of Crime Act 2002 to appropriate all assets gained by owners and occupiers through the non-compliance of an enforcement notice.
- 2.15 Planning enforcement action should be sensitive to the intent and context of the owner and the development. A householder making a genuine mistake out of ignorance will be treated proportionately, compared to a clear and flagrant breach of a planning decision or a serious case of harm .

## 3 Service Standards

- 3.1 Brentwood Borough Council's existing practices have sought to achieve the principles of good enforcement practice.

### Openness

- 3.2 We aim to provide information and advice in plain language on the rules and adhere to government guidance. We aim to publish on the website supporting technical detail and links to government guidance. We will keep as much as possible in the public domain whilst protecting confidentiality of those who are reporting concerns and possible breaches of the regulations or planning conditions.

### Proportionality

- 3.3 We will deal with each case on a priority basis following initial investigation to establish the facts and refer to records and relevant policies. Depending on the seriousness of the situation, we will always seek to afford a contravener the opportunity of remedying the breach of planning control without formal action. In considering whether formal action is expedient in planning terms, we will have regard to negotiations, any undertakings given, the history and whether time limits are approaching which would confer immunity on unlawful development.

### Consistency

- 3.4 We seek to manage enforcement cases with maximum efficiency and standards procedures, making the best use of technology and electronic communication. There are standard documents in the toolkit with government guidance updated from time to time for these various procedures. Where discretion is applied against standards, we will adhere to the national and local plan policies to achieve as far as possible a fair and equitable outcome.

### Helpfulness

- 3.5 We aim to be polite but firm with the person/people that are alleged to be in breach of planning or environment controls. We will meet when requested, both before and during enforcement actions, to try and achieve a satisfactory outcome and will keep complainants and Members informed.

### Procedures

- 1) Advice following an investigation will be put clearly and simply in writing. All letters/electronic mail and notices to unauthorised developers will

explain the breach, the requirements of the authority to put the matter right including time scales and remind the developer of the powers of the authority has to take formal action. Letters will also give contact names and telephone numbers to ensure developers are given as much information as is possible to help and advise.

- 2) The rights of appeal of the developer against any formal notice will be clearly explained.
- 3) Before any formal action enforcement action is undertaken, an opportunity will be offered to comply with planning control or apply for retrospective consent.
- 4) Any threat of formal action will be followed up swiftly if there is inadequate evidence of steps being taken to resolve the problems.

## Minimising Occasions that Breaches of Planning Control Occur

- 3.6 Breaches of planning control comprise the carrying out of development without the granting of planning permission, or deemed permission by government order, or without compliance with approved plans or any conditions attached to a planning permission. While carrying out development without planning consent is not a criminal offence, failure to comply with an enforcement notice is a criminal offence.
- 3.7 Unauthorised works to listed buildings, trees covered by Tree Preservation Orders (TPO), trees within a Conservation Area, advertisements and fly-posting also come within the scope of planning control, but unlike those identified above, constitute a criminal offence. There is more detailed information on tree enforcement protection in Appendix 3 and information regarding untidy land notices in Appendix 4.
- 3.8 Development Management Officers already monitor the implementation of planning permissions by focusing upon achieving quality development in accordance with policy. The Council regards planning enforcement action as a last resort, following advice and guidance. It strives to promote its pre-application advice service, which should result in better quality and more lawful development.

## 4 Identifying Unauthorised Development

- 4.1 To report an alleged breach of planning control, completing the online form is the quickest and easiest way. The online form can be found at: <http://forms.brentwood.gov.uk/default.aspx/RenderForm/?F.Name=H8GCZSSZ64c&HideToolbar=1> .
- 4.2 It is strongly encouraged that the online form is used in the first instance as this is the most efficient use of resources available. Complaints made by letter, phone or email are logged onto the web form. The complaint will be recorded and acknowledged, so long as the minimum required information of address and location is provided. Complaints made based on sound planning issues will be investigated, while non-planning related matters will be referred onto relevant regulatory authorities.
- 4.3 Anonymous complaints about a third party will not usually be investigated. The identity of persons reporting suspected breaches will be treated as confidential by officers and members of the Council. If a member of the public wishes to remain anonymous then they must go through either their local Ward Member or Parish Council to submit the online form on their behalf.
- 4.4 The planning history of a site is always investigated to establish any planning permissions or permitted development.
- 4.5 An assessment is then made into the nature and degree of harm of any breach in relation to relevant planning policy, legal context and the need for remedial action. Following this assessment, the Council will consider how to proceed with the investigation.
- 4.6 The Council does not investigate highway matters, boundary wall or other land disputes and activities incidental to residential use of a dwelling, including stationing of a caravan or trailer within its grounds as these issues do not constitute planning matters. Any potential breaches of other legislation will be passed on to the appropriate investigative authority.
- 4.7 Planning enforcement operates to protect the public interest. It is not the purpose of the planning system to protect the private interests of one person against the activities of another. Action must be based on sound planning grounds and be proportionate to the harm caused by the breach. Local opposition to or support for an unauthorised development will not be given weight unless that opposition or support is founded upon valid planning reasons. Other issues that cannot be taken into account include loss of value to property, competition with other businesses, land ownership and boundary disputes or breaches of covenant.
- 4.8 The Council will only take formal enforcement action when expedient to do so. Formal enforcement action will not be instigated solely to regularise trivial breaches of planning control, where there is no harm to public amenity; the breach is of a technical nature, or can be readily remedied by

negotiation. Such breaches include temporary structures, flyposting, untidy sites, changes in surfaces, unobtrusive and minor changes of use or extensions. In taking formal enforcement action, the Council will be prepared to use all the enforcement powers available, but the action taken will be commensurate with the seriousness of the breach. More information about the planning enforcement powers available to the local planning authority are set out in Appendix 1 Enforcement Toolkit. The Scoring Chart and the form of record where required under the Openness of Local Government Bodies Regulations 2014 also form part of this Appendix.

## 5 Enforcement Priorities

Planning Enforcement Officers receive a high number of complaints regarding allegations of breaches of planning control every year. It would be impossible to investigate and pursue all of these allegations with equal priority. Resources are limited, and it is essential to use them to maximum effect. Therefore, each case is prioritised according to the seriousness of the alleged breach and the degree of harm being caused. The aim is that the Council response is fair and proportionate to both the context and the nature of the breach.

**Table 1:** Enforcement Priorities

Priority	Considerations	Site Visit within
<b>High</b>	<ul style="list-style-type: none"> <li>• Unauthorised demolition, partial demolition or significant alteration of a building that is essential to retain the character of a conservation area or the openness of the Green Belt</li> <li>• Unauthorised works to a listed building</li> <li>• Irreversible harm to amenity of a Conservation Area</li> <li>• Unauthorised works to trees covered by a Tree Preservation Order or in a conservation area</li> </ul>	24 hours
<b>Medium</b>	<ul style="list-style-type: none"> <li>• Development prior to compliance with and discharging of conditions on a planning approval</li> <li>• Breach which results in serious demonstrable harm to amenity of neighbourhood</li> <li>• Unauthorised development in a designated area</li> <li>• Source of significant public complaint</li> <li>• Unauthorised advertisements that have a detrimental impact on highway safety</li> </ul>	5 working days
<b>Low</b>	<ul style="list-style-type: none"> <li>• Unauthorised development which is not the source of significant public complaint</li> <li>• Erection of unauthorised advertisements</li> </ul>	15 working days

5.1 All communication will be in plain language. All decisions and use of investigatory powers will be recorded. The Council will look for and

consider any alternative solution to formal action if it achieves a satisfactory conclusion to a reported breach of planning control.

**Table 2: Target times for initial response to complaint and the owner or occupier of the site**

Priority	Response targets from notification
High	3 working days
Medium	10 working days
Low	20 working days

5.2 Many cases may require repeat site visits, negotiation, serving of notices on owners and more formal action before the breach is resolved. When these occur, Enforcement Officers will endeavour to keep original complainants informed on a regular basis and indicate arrangements for this in the initial response letter. Complainants will also be provided with the details of the officer assigned to deal with their complaint should they require further updates or have new information pertinent to the investigation.

## Site Visits

5.3 Planning and Listed Building legislation gives authorised Officers extensive rights to enter land and buildings, at any reasonable hour, to carry out investigations and other duties. The Toolkit at Appendix 1 has the statutory references. Because of the nature of enforcement work it is often not prudent or possible to give advance notice of an intended visit. Only where considered necessary and appropriate will 24 hours notice will be given if access is required to a dwellinghouse.

5.4 On site visits Investigating Officers will have regard to the Human Rights Act 1998 (HRA), the Regulation of Investigatory Powers Act 2000 (RIPA) and the Police and Criminal Evidence Act 1984 (PACE) and any Act/s that amend or revoke this legislation or become relevant. An investigating officer may, where she/he considers an offence has occurred, interview an alleged contravener 'under caution' (PACE) where appropriate. If access is denied the Council may consider seeking warrant entry. Refusal of entry (to an officer exercising their right of entry in accordance with their powers) will be regarded as wilful obstruction and the person may be prosecuted.

5.5 After the first site visit (and also during the investigation process) the Investigating Officer will consider whether it is necessary to re-consider the prioritisation of the complaint.



- 5.6 The Council will not tolerate any of its staff being threatened with or subjected to physical or verbal abuse in the course of the performance of their official duties and will take appropriate legal action where necessary.

## 6. Response Procedures

6.1 The officer will write to the owner and occupier of the site, when appropriate, and the complainants to advise on one of the following:

No further action (with properly recorded reasons), as:

- There is no breach, or
- It would not be expedient to pursue the case.

Further investigation required:

- This often involves the serving of a Planning Contravention Notice

Negotiate a solution:

- This depends on context and the intent of the owner.

Retrospective application for planning permission:

- The Council will identify if the unauthorised development meets the requirements of the relevant planning policy(ies). If the development appears acceptable the owner of the property will be requested to submit a planning application in order to rectify the breach.

Formal enforcement action, as a last resort:

- If planning permission is unlikely to be forthcoming and an application is not being sought, letters and notices will be served to set out the reasons for this by identifying the harm, the policy context and other material planning considerations.
- Where it is considered that **serious harm** would result and the unauthorised development could NOT be made acceptable by the granting of planning permission, the owner will be advised that the breach of planning control should cease within 28 days. The owner will receive an explanation in writing why this course of action is justified by identifying the harm, the policy context and other material planning considerations.
- Action will only be taken in accordance with the authority delegated to the Head of Planning and in accordance with the Council's approved priorities.

How we decide if an investigation is 'complete'

6.2 We consider our investigations to be "complete" when one of the following points has been reached:

- The investigation identifies that no breach in planning control has occurred.

- An alleged breach of planning has been identified but then resolved by negotiation.
- A planning application or other form of application has been submitted and approved following the investigation.
- A breach in planning control has been identified and an application requested but not submitted. A report has been prepared and is on an agenda for Councillors to confirm that it is not expedient to take formal enforcement action in this case at this time.
- A breach in planning control has been identified. Authority to take formal enforcement action and/or issue a notice has been given. The matter is then passed to legal advisors to process.

## 7. Improving Planning Enforcement

- 7.1 The Council will monitor the length of time taken from the receipt of information regarding a suspected breach of planning control to the conclusion of the case with specific reference to the timescales shown previously in this document. This is carried out in order to ensure the timely progression of all complaints received.
- 7.2 The Council employs Planning Enforcement Officers who investigate, initiate enforcement action and provide advice. These officers maintain close contact with the Building Control, Environmental Health, Council Tax and Licensing departments within the Council and with Police and Legal Advisers.

### Compliance Checking

- 7.3 In order to maintain public confidence in the planning process, national planning practice guidance asks local planning authorities to consider a proactive approach to enforcement. The Council will therefore identify a sample of planning applications and/or developments and check for compliance.
- 7.4 The outcome of the compliance check will be reported to the applicant, agent or landowner. Any non-compliance will be addressed through usual enforcement practice.

## Appendix 1: Planning Enforcement Toolkit

The main options to tackle possible breaches of planning control are:

### No formal action

Early engagement is important, and the landowner may take immediate action when advised of the issue. Where a breach of planning control is on council owned land, or on land where a covenant controls the issue, such breaches are most effectively addressed through estate management or landlord control.

PPG (paragraph 011) states that local planning authorities should usually avoid taking formal enforcement action where

- There is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;
- Development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;
- In their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.

An outstanding breach of control may affect the sale and marketing of a property and nothing in this plan should be taken as condoning a clear and wilful breach. However, the balance of public interest varies from case to case.

A scoring chart for assessing harm is attached to this Appendix .

### Retrospective Planning Application

PPG paragraphs 012 and 013 advise that where the LPA consider that an application is the appropriate way forward to regularise the situation, the owner and occupier should be invited to submit an application under Section 73A of the Act without delay. It cannot be assumed that permission will be granted – the application will be considered in the usual way after consultation, and an enforcement notice may be issued in relation to other elements of the development. PPG advises that a person who has undertaken unauthorised development has only one opportunity to obtain planning permission after the event – either by an application under Section 73A or by means of an appeal. The LPA may decline to determine a retrospective planning application if an enforcement notice has previously been issued.

### Planning Contravention Notice

This can often be the first formal step in formally resolving a breach of planning control. It is a discretionary procedure to gather further information regarding breaches of planning control. The notice may give notice of a date and time and place at which any offer made by the recipient of the notice to apply for planning permission, refrain from carrying out operations or activities or undertake remedial works will be considered by the authority. An opportunity to make such representations must be made. It is not available for breaches of listed building control or protected trees. It is an offence to fail to complete or return a notice within 21 days or provide false or misleading information. Paragraphs 015 and 016 of PPG refer.

## Section 330 of the Town and Country Planning Act 1990

This power is also used to obtain information but usually in cases where the Council has sufficient details about the activities being carried out but requires further information concerning ownership. It involves serving a formal notice on occupiers and/or persons with other interests in the premises or land. For both of these cases it is an offence to fail to comply with the requirements of the notice within the period set for its return or to make false or misleading statements in reply. Conviction currently carries a maximum fine not exceeding £1,000.

## Rights of Entry

The Act specifies the purposes for which entry to land including buildings may be authorised, namely:

- to ascertain whether there is or has been any breach of planning control
- to determine whether any of the LPA's powers should be exercised
- to determine how such power should be exercised, and
- to ascertain whether there has been compliance with any requirement arising from earlier enforcement action.

A record should be made of the inspection with appropriate photographs

Entry to a dwellinghouse cannot be demanded as of right unless 24 hours' advance notice has been given to the occupier. Where entry is refused or obstructed it is possible to apply to the Magistrates for a warrant to allow entry. Paragraphs 052-055 PPG refer. There are complementary provisions in the Planning (Listed Buildings and Conservation Areas) Act relating to heritage assets.

## Breach of Condition Notice:

This notice can be used where conditions imposed on a planning permission have not been complied with. It is mainly intended as an alternative to an enforcement notice for remedying a breach of condition, but may be served in addition to an enforcement notice, perhaps as an alternative to a stop notice. It can only be challenged by judicial review. Following the end of the period for compliance, a "person responsible" who has not ensured full compliance with any conditions and any specified steps will be in breach of the notice and guilty of an offence. Paragraphs 046-049 of PPG refer.

## Enforcement Notice:

Effective enforcement is important. Development becomes immune from enforcement if no action is taken within four years of substantial completion of building operations or ten years of a change of use or breach of condition. These time limits do not prevent enforcement after the relevant dates in particular circumstances. An enforcement notice should enable every person who receives a copy to know

- Exactly what, in the LPA's view, constitutes the breach of planning control; and
- What steps the LPA require to be taken to remedy the breach.

An enforcement notice may “under enforce”, by stipulating lesser requirements than full compliance. The recipient must take the specified steps set out in the notice within a set time period. Failure to comply with the notice is a criminal offence. There is a right of appeal, which suspends the notice from coming into effect: however, a Stop Notice may be issued. The LPA can prosecute for failure to comply with an enforcement notice as well as using default powers. Paragraphs 018-023 of PPG refer.

## Planning Enforcement Order:

Where there has been deliberate concealment of a breach of planning control, the LPA may apply to the Magistrates' Court for a planning enforcement order (PEO). Where a PEO is granted, the LPA will have 1 year and 22 days to serve an enforcement notice, beginning on the day that the order is granted, irrespective of how long ago the breach first occurred. The 4 year and 10 year periods for immunity will not apply in cases of concealed breach. An application for a PEO must be made within 6 months of the LPA becoming aware of the breach sufficient to justify enforcement action being taken. A Magistrates' Court may only make a PEO if it is satisfied that the breach has been deliberately concealed. There is no definition of what deliberate concealment means in practice. Paragraphs 024-027 PPG refer.

## Enforcement on Crown land:

There are restrictions in Section 296A and 296B of the Act on serving enforcement notices, stop notices, revocation order and discontinuance orders on the Crown. An LPA can only enter Crown land for any purposes connected with the making or enforcing an order under the Act with the consent of the relevant Crown body. Consent is also required before bringing legal proceedings in the courts. The Crown is immune from prosecution under these provisions.

## Section 215 Notice:

This notice can be used in relation to untidy land or buildings when the condition of the land or buildings adversely affects the amenity of an area. Best Practice Guidance is on the Council's web site

## Stop Notice:

This notice can be used in conjunction with an enforcement notice where the breach of planning control is causing irreparable and immediate significant harm. A Stop Notice should only be served in exceptional circumstances, when the effects of the unauthorised activity are seriously detrimental to the amenities of adjoining occupiers or the surrounding area. Furthermore, if the related Enforcement Notice is quashed on appeal, the Council may be liable to pay compensation for any financial loss resulting from the issuing of the Stop Notice. Paragraphs 028 – 035 PPG refer.

## Temporary Stop Notice:

These take effect immediately from the moment they are issued, and last for up to 28 days. A Temporary Stop Notice would only be issued where it is expedient that the activity or development should cease immediately. The requirements should prohibit only what is essential to safeguard the amenity or public safety in the vicinity of the site, or to prevent serious or irreversible harm to the environment in the surrounding area. Paragraphs 036-045 PPG refer.

## Listed Building Enforcement :

PPG paragraph 057 notes that the Listed Building Enforcement provisions are in sections 38-46 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and the enforcement provisions relating to the demolition of an unlisted building in a conservation area (“relevant demolition”) are in the Act. Listed Building Enforcement notice can be served against unauthorised works that damage the character of a listed building. There is time limit in which such an enforcement notice can be served.

There are five important differences between planning enforcement and listed building and conservation area enforcement, namely:

- There are no application fees for listed building consent or relevant demolition;
- There are no time-limits for issuing listed building enforcement notices or for when enforcement action may be taken in relation to a breach of planning control with respect to relevant demolition, although the length of time which has elapsed since the apparent breach may be a relevant consideration;
- Carrying out work without the necessary listed building consent, or failing to comply with a condition attached to that consent, whereby such works materially affect the historic or architectural significance of the building, is an offence whether or not an enforcement notice has first been issued;
- Carrying out work without the required planning permission for relevant demolition or failing to comply with a condition attached to that planning permission is an offence under Section 196D of the Town and Country Planning Act 1990; and
- Listed Building Consent and planning permission for relevant demolition are not granted retrospectively.

A person who is found to carry out unauthorised works that affect the character of the listed building or relevant demolition in a Conservation Area can be prosecuted, and imprisoned for a term not exceeding 6 months, or fined up to £20,000.

## Injunction:

This may be done in the most serious cases generally where irreparable harm is being done or is apprehended, or where and where other actions have been or would be ineffective. Section 187B of the Act applies where the LPA consider it expedient to restrain actual or apprehended breaches of planning control. Section 44A Planning



(Listed Buildings and Conservation Areas) Act is a parallel provision in respect of Listed Buildings. The Court may grant an injunction against a person whose identity is unknown, but LPAs will need to identify to the best of their ability the person against whom the injunction is sought. The following may be used in support of the authority's submission to the Court:

- Photographic evidence of the persons concerned;
- Affidavit evidence by the LPA officers
- Reference to chattels (e.g. registered vehicles) known to belong to, or be used by, that person
- Other relevant evidence (such as a name by which the person is commonly known).

There are significant costs involved in bringing such an action and it can only be justified in extreme cases. Defendants risk imprisonment if they do not comply with a court order.

## Unauthorised Advertisements:

It is an offence for any person to display an advertisement in contravention of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. The Council will consider whether or not to prosecute in either the interests of amenity or public safety. In situations where an advertisement is displayed with deemed consent, the Council can still require its removal by issuing a Discontinuance Notice. Such a notice, against which there is a right of appeal, can only be issued to remedy a substantial injury to local amenity or if there is a danger to members of the public.

In addition, the Council can serve a Removal Notice. Once served, the Council can, at its discretion, take direct action to remove authorised advertisements and recover the costs from the landowner.

## Direct Action or "Default" Action:

This may be done in the most serious cases where irreparable harm is being done and where other actions have failed. There are significant costs involved in bringing such an action and it can only be justified in extreme case. Powers are available (in Planning legislation) to enter land and take steps required by enforcement or similar notices (e.g. Listed Building enforcement notices, Untidy Land/Section 215 Notices, Illegal advertisements with extended powers under the Localism Act, High Hedge enforcement and Section 106 Agreements.) The expenses reasonably incurred may be recovered from the person who is the owner of the land.

Other than advertisements and Untidy Land notices, direct action is seen as a draconian power and normally a course of last resort. The Council's decision may be challenged by Judicial Review. There may be violence or threats of a breach of the peace and the action must be well planned, organised and implemented with the utmost care. The recovery of costs in the cases of works in default is also not without difficulty. The legal recovery of civil costs can be protracted and disproportionately expensive to the recovery.

The Good Practice Guide for Enforcing Planning Control (paragraph 10.5) lists the following practical matters to be considered when planning default action:

- Exactly what must be done (including any necessary operational development on the land) in order to carry out the required steps in the enforcement notice
- What is the best time of day to carry out the operation and how long is it likely to take
- Who is best equipped to carry out the operation – Council staff or a private contractor
- Whether any special powers of entry are needed
- Whether other local authority services (e.g. Social Services) need to be involved
- If chattels (e.g. caravans, cars, working equipment) are to be removed from the land, where can they be stored securely until the owner can retrieve them
- If a breach of the peace or any more serious disturbance is anticipated, it may be advisable to seek and injunction as a precaution and to encourage any necessary police presence

With regard to High Hedge enforcement after a Remedial Notice has taken effect if there is a first conviction and the owner of the land does not comply with an order of the court to take steps within a reasonable period fixed by a court order the land owner may be liable on summary conviction to a daily penalty. While there is a default power for the Council to carry out works to a High Hedge, enforcement by prosecution and Court order is considered better practice.

There are also powers in Section 219 of the Act to carry out works required by a notice under Section 215 and then claim expenses from the owner or occupier.

In recovering reasonable expenses under these provisions the LPA may include such sums as appear reasonable in respect of establishment charges. Any chattels removed may be sold unless their owner claims them within three days and the balance of the proceeds after deducting expenses is then paid to the owner. Unpaid expenses become a charge on the land and an application may be made to the Court for an order for sale.

The Proceeds of Crime Act 2002 provides for confiscation orders where a defendant is convicted in the Crown Court for sentence and the prosecution ask for an order in respect of the conduct or lifestyle of the defendant benefitting from criminal activity. Breaches of enforcement notices which prohibit the carrying on of a use which generate an income can come within these provisions

## Annexures

Annexed to this Appendix :

- Scoring chart for the assessment of Harm,
- Template for recording decisions on the web site where the Openness of Public Bodies Regulations 2014 apply.

**Initial Analysis of Enforcement Enquiries: Harm Scoring and Threshold for taking further action**

<b>Points Allocation</b>	<b>Scoring</b>	<b>Score</b>
Status of breach	Worsening (1) Ongoing but Stable (0)	
Highway Safety Issue?	Yes (1) No (0)	
Other safety issue?	Yes (1) No (0)	
Complainant	Immediate neighbour. Staff (2) Borough or Parish Councillor (1) Anonymous/ Malicious (0) Other (1)	
Age of Breach	Within 3 months of immunity (2) Less than 1 month old (1) More than 1 month old (0)	
Is the harm	Widespread / Public (2) Local (Private) (1) None (0)	
Irreversible harm?	Yes (1) No (0)	
Causes statutory or serious environmental nuisance	Yes (1) No (0)	
Breach of a condition or Article 4 Direction? (Score 1 per condition breached (max 5))	Yes (1-5) No (0)	
Operational development in Green Belt or Major Breach of Plan Policy	Yes (1) No (0)	
Development affecting contaminated land	Yes (1) No (0)	
Flood Zone	Zone 3 (2); Zone 2 (1); Zone 1 (0)	
Affecting setting of Conservation Area	Yes (1) No (0)	
Harming a listed building or its setting	Yes (1) No (0)	
Sensitive site e.g. SSSI; SAM; Listed Garden; Archaeological importance	Yes (1) No (0)	
Part of a special initiative (specify)	Yes (1) No (0)	
Undesirable Precedent (specify)	Yes (1) No (0)	
<b>Total Points (Harm Score)</b>		

Where the Harm Score is **4** or below, the case will not be investigated further. The developer will be informed of the breach/ likely breach and invited to remedy or regularise it. Complainants will be notified that the development causes insufficient harm to warrant further action.

**PLANNING ENFORCEMENT DECISIONS BY AN OFFICER  
published pursuant to S.I 2014/2095**

<b>Case ref:</b>	
<b>Site:</b>	<b>Decision By:</b>
<b>Ward:</b>	<b>Parish Council:</b>
<b>Decision :</b>	
<b>Reasons/ Delegated Report:</b>	
<b>Alternative options considered and rejected when making the decision</b>	

**DETAILS OF ANY CONFLICT OF INTERESTS OR DISPENSATIONS GIVEN**

The Openness of Local Government Bodies Regulations 2014 S.I 2014/2095 require the following to be declared:

- A record of any conflict of interest declared by any Member who is consulted by the officer which relates to this decision
- In respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's Head of Paid Service

**Details of any conflict of interest:**

<b>Signed:</b>	<b>Date:</b>
Contact Officer	<b>Date decision published on website :</b>
<b>Implementation date:</b>	Copy to Ward Councillors if required:

## Appendix 2: High Hedges Procedure

The Anti-social Behaviour Act 2003 gives the owner or occupier of domestic property a right to complain to the local authority if the height of a high hedge adversely affects the reasonable enjoyment of his property. The owner of the property that is unoccupied can also complain, on the basis that a prospective occupier would be affected. The right to complain does not extend to the effects of the roots of a high hedge.

If the authority finds the complaint justified, it issues a remedial notice, stating what immediate action should be taken and what further preventative action is required. There is a right of appeal. It is an offence not to take action required by a remedial notice.

After a remedial notice has been taken effect, the hedge owner is required to comply. There should be no need for further enforcement unless the hedge is allowed to grow significantly. Works may not be undertaken if there are birds nesting during the nesting season.

Unlike the policy relating to hedgerows on non-residential property, there is no special protection for ancient hedges.

A “high hedge” for this purpose is one formed wholly or predominately of a line of at least two evergreen or semi-evergreen trees or shrubs. The hedge must measure more than two metres above ground level. There is an exception that may cause difficult arguments: a hedge is not regarded as forming a barrier to light or access if gaps significantly affect its overall effect as a barrier at heights over two metres (Anti-social Behaviour Act, section 66). There is no statutory definition of evergreen or semi-evergreen. A dictionary definition of evergreen is, “having green leaves all the year through; opposite to deciduous” (Shorter Oxford Dictionary). “Semi-evergreen” has been defined, “Normally evergreen but losing some or all of its leaves in a cold winter or cold area” (Hillier’s Manual of Trees and Shrubs, 5th ed., 1981, David & Charles Publishers plc).

The High Hedges Procedure, complaint form and useful links to legal and national guidance is available to view on the Council’s website  
<http://www.brentwood.gov.uk/index.php?cid=2060>

# Appendix 3: Tree Protection Enforcement

## Good Planning

Trees are an important constituent of the Borough Townscape/Landscape. It is, therefore, imperative that protection be afforded to them early in the planning process by ensuring consideration be given to establishing and maintaining protection areas around trees which will be robust and permanent.

## Tree Protection

Trees situated outside of the property boundary are protected by the laws regarding trespass and criminal damage.

Trees may be protected by legislation enshrined in the Town and Country Planning Acts 1990 -2012, by being subject to a tree preservation order (TPO) or being situated within a conservation area (CA). Trees may also be protected by the Forestry Act 1967, enforcement of which is vested in the Forestry Commission.

In certain circumstances trees may be protected by conditions attached to a planning permission.

## Compliance

Where a permission is granted for tree works to protected trees, it is desirable for a condition to be attached requiring notice of the intended operations to enable full or part supervision by an Arboriculture or Operational Services Officer. This to ensure understanding of, and compliance with, the terms of reference and conditions attached to any permission. Many contractors have a differing interpretation of the expected standards of work, such as B.S. 3998, and the resulting tree works may be of inferior quality. This in turn will lead to a reduction in the value of the trees itself and of the protected tree stock of the borough. Compliance should be the starting point of any enforcement policy.

## Specific Tree Protection

a) Where trees are protected by a TPO, the Council's consent is normally required prior to undertaking any works to the tree and this will require the submission of a formal application. Any consent may be subject to conditions, and there is a right of appeal to the Secretary of State against the refusal of consent or the granting of consent subject to conditions.

b) Where trees are protected by inclusion in a conservation area six weeks notice must normally be served on the Local Planning Authority of any proposal to carry out works on the tree. During the six week period, the Authority is required to consider the need to

make a Tree Preservation Order to prevent the works being carried out. If the Authority takes no action within six weeks the works may go ahead as notified.

c) Trees retained under planning conditions may typically require that new trees be planted and maintained, or that existing trees be retained as part of development, usually for a minimum of five years. An application can however be made to the Local Planning Authority to vary or remove a condition (such as to allow the removal of a tree).

If planning conditions are not complied with, the Local Planning Authority is empowered to serve an enforcement notice or breach of condition notice to secure compliance. There is a right of appeal to the Secretary of State against an enforcement notice.

d) Offences under 1 and 2 above: There are two offences, which apply equally to trees protected by Tree Preservation Orders and those within Conservation Areas.

Firstly, anyone who cuts down, uproots or wilfully destroys a tree, or who lops, tops or wilfully damages it in a way that is likely to destroy it, is liable if convicted in the Magistrates Court, to a fine of up to £20,000. If the person is committed for trial in the Crown Court, they are liable if convicted to an unlimited fine. The courts have held that it is not necessary for a tree to be obliterated for it to be “destroyed” for the purposes of the legislation. It is sufficient for the tree to have been rendered useless as an amenity.

Secondly, anyone who carries out works on a tree that are not likely to destroy it, is liable, if convicted in the Magistrates Court, to a fine of up to £2,500. Any proceedings for offences in this category must be brought within six months of the date the offence was committed.

e) Proving the offence: In order to bring a successful prosecution, the Authority must be able to prove that:

- 1) The defendant has carried out, or caused, or permitted works on the tree
- 2) The tree was protected
- 3) The tree works were carried out without the Authority’s consent
- 4) The works were not exempt works

If it is claimed that works are exempt from the usual requirements of the legislation, it is for the defendant to prove, on the balance of probabilities, that the exemption applies.

f) Investigation of contraventions: Incidents involving alleged contraventions of the tree protection legislation often come to light as a result of complaints received by the Council. Cases also come to light in other ways, such as during the monitoring of works on development sites or routine visits to adjacent properties.

When a contravention is suspected the Council will carry out an initial investigation, consisting of a check to establish whether the tree is protected and whether any consent has been granted. In most cases the Council’s Arboriculture Officer will also make a site visit.

Potential suspects will be identified and contacted as soon as possible in the process (this may be at the time of the initial site visit). They will be asked to give their observations on the incident and any relevant background information.

If on receipt of this information it appears that the person in question may have committed an offence and that answers to questions may be required as evidence, he or she will normally be invited to the Council's offices to undertake a tape-recorded interview under caution. This will be conducted under the provisions of the Police and Criminal Evidence (PACE) Act 1984 and the relevant Code of Practice will be adhered to.

In some cases it may however be necessary to caution a suspect during a site visit. In which case this will be issued in accordance with the code of practice issued under the Police and Criminal Evidence Act 1984 and the suspect will be advised that he or she is not under arrest, is free to leave at any time and is entitled to legal representation.

The identity of any complainant will be kept confidential and not disclosed to the alleged perpetrator as far as practicable and in accordance with both the Data Protection Act 1998 and Freedom of Information Act 2000. It will however be made clear to the complainant that if the case comes to court it is most likely that they will be required as a witness and in that case they would not normally be entitled to confidentiality. Complainants will be kept informed of the course of the investigation and its outcome.

Complainants and any other witnesses will be contacted as appropriate and may be requested to provide written statements to be used as evidence in court. Witnesses will be informed that they may be required to appear in court to give evidence and be cross-examined as necessary. Suspects will be given adequate and fair opportunity to give their side of events during the course of investigations.

g) Time scale: Initial investigation as outlined above will be undertaken as soon as practicable and in line with the following guidelines, based on the available information:

**Table 1:** Tree Protection Enforcement Timescales

Response Level	Response Criteria	Response Time
1	Ongoing works likely to have a significant impact on public amenity	Within 2 working days
2	Completed works likely to have a Significant impact on public amenity And ongoing works of lower amenity impact	Within 8 working days
3	Other works including longstanding issues	Within 20 working days

h) Possible actions by authority: The Council has a range of possible courses of action available to deal with the cases of unauthorised works on protected trees. These include the following:

- 1) Initiate a prosecution (which may be for destroying the tree or for lesser works to it).



- 2) Administer a simple caution. This is a formal process whereby the perpetrator signs a statement admitting the offence and submitting to the caution. It may be referred to at the sentencing stage if the same person is ever found guilty of a subsequent offence. It may also be taken into consideration when deciding whether or not to prosecute at a later stage for another similar offence. Administering a simple caution is only an option if the suspect admits the offence.
- 3) Require the planting of a replacement tree for each tree destroyed, under section 206 of the Town and Country Planning Act 1990.
- 4) Serve a replanting direction under section 207 of the same act. This is a formal procedure to secure replacement planting, which can be invoked if the landowner does not otherwise comply with a duty to carry out replacement planting.
- 5) Informal action, such as written correspondence requesting remedial works and warning of the potential for legal action and fines if a further contravention occurs.

Decisions as to what action to take will be taken in the public interest, ignorance of the law is not a credible excuse, however all relevant issues will be taken into account, with each case being dealt with individually.

Prosecutions will be considered against the tests of evidential value and public interest, these will be dealt with by the councils legal advisors.

Cautions may be used in accordance with guidance from the legal section.

i) Replanting: In incidents where the tree has been destroyed, a replacement tree will be replanted. This replacement would normally be planted in the planting season following the incident. In cases where this does not happen a tree replacement notice [TRN] may be considered. A TRN may also be considered when the automatic legal duty to replant on the death or removal of a protected tree. Any replacement tree is subject to the same protection as the original tree that was lost.

## Appendix 4: Untidy Land Notices Section 215

7.5 From a community point of view, tidy gardens and land mean an area looks well cared for making people feel safe in that neighbourhood. If untidy sites are left, they become worse and the area starts to feel neglected and unsafe. Untidy sites are rarely dangerous to public health but they will be an eyesore, which means it is detrimental to the local amenity.

7.6 Under section 215 of the Town and County Planning Act 1990, the local planning authority may serve a notice requiring the land to be cleaned up. The power is exercisable if it appears that 'the amenity of a part of [the local planning authority's] area, or adjoining area, is adversely affected by the condition of land in their area' (section 215(1)). The notice 'shall require such steps for remedying the condition of the land as maybe specified in the notice to be taken within such period.

7.7 There is a right to appeal to the Magistrate's Court on any of the following grounds:

- (i) that the condition of the land to which the notice relates does not adversely affect the amenity of any part of the area of the local planning authority who served the notice, or of any adjoining area;
- (ii) that the condition of the land to which the notice relates is attributable to, and such as results in the ordinary course of events from, the carrying on of operations or a use of land which is not in contravention of Part III [the requirement to have planning permission];
- (iii) that the requirements of the notice exceed what is necessary for preventing the condition of the land from adversely affecting the amenity of any part of the area of the local planning authority who served the notice, or of any adjoining area;
- (iv) that the period specified in the notice as the period within which any steps required by the notice are to be taken falls short of what should reasonable be allowed.

7.8 If the notice is not complied with, the local planning authority is empowered to enter the land, carry out the works and recover the cost from the owner in a similar manner to carrying our works under an enforcement notice. The Council may also prosecute for non-compliance.

7.9 To find out more about the Best Practice Guidance, please visit the Council's website [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/11491/319798.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11491/319798.pdf)

## Appendix 5: Hedgerows

- 7.10 The Environment Act 1995 empowered the Secretary of State to make regulations to protect important hedgerows. The Hedgerows Regulations 1997 require consent from the local planning authority for the removal of important hedgerows over 20 metres in length (or, if shorter, meeting other hedgerows at each end) growing in, or adjacent to, any common land, designated nature reserve or site of special scientific interest, or land used for agriculture, forestry or the breeding or keeping of horses, ponies or donkeys, unless they are within or mark the boundary of the curtilage of a dwelling house. Important hedgerows are those over 30 years old which meet criteria covering archaeology and history and wildlife and landscape.
- 7.11 The Brentwood Replacement Local Plan (2005) recognises the many natural features of conservation interest, including hedgerows, which should be appropriately managed and, wherever possible, enhanced. Policy C5 Retention and Provision of Landscaping and Natural Features in Development it says “*in proposals for development, existing trees, hedges, woods, ponds, watercourses and other natural features should be retained*”
- 7.12 An important hedgerow may only be removed (subject to exceptions) if the owner has served a hedgerow removal notice on the local Planning authority and either consent has been given or a period of 42 days has passed within the authority serving a hedgerow retention notice. Where a hedgerow retention notice has been given stating that work relating to a hedgerow may not be carried out and that notice has not been withdrawn, removal of the hedgerow consisting of or including any such work is prohibited.
- 7.13 One of the exceptions to needing to give notice is if the removal is required ‘for making a new opening in substitution for an existing opening which gives access to land.’ This exception is subject to the requirement in regulation 6 (2) that:
- ‘Where the removal of a hedgerow to which these Regulations apply is permitted by these Regulations only by paragraph (1)(a), the person removing it shall fill the existing opening by planting a hedge within 8 months of the making of the new opening.’*
- 7.14 If a hedgerow has been removed in breach of regulation 5, the local planning authority may serve a hedgerow replacement notice on the owner of the land (or if removed by a utility operator, on that operator) requiring another hedgerow to be planted. The notice shall state the species and position of the shrubs, or trees and shrubs to be planted and the period within which the planting is to be carried out. There is a right of appeal against the notice. The authority may carry out works in the default and recover the cost from the owner as under the tree preservation order regime.

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**24 March 2015**

## **Ordinary Council**

### **Assignment of Strategic Safeguarding Lead and Member Champion**

**Report of:** *Graham Farrant – Chief Executive*

**Wards Affected:** *All Wards*

**This report is:** *Public*

#### **1. Executive Summary**

- 1.1 At the 17 December 2014 Community Committee meeting, Members considered a report on Safeguarding Policy and Procedures.
- 1.2 The recommendations included in the report were resolved unanimously by the Committee and for one of these agreement was needed by Full Council, as follows:

**3. Members recommend that the Strategic Safeguarding Lead be assigned to the (Acting) Chief Executive and the Safeguarding Member Champion be allocated to the Leader of the Council, to be agreed at Ordinary Council.**

#### **2. Recommendation**

**That the Council's Strategic Safeguarding Lead be assigned to the Chief Executive and the Safeguarding Member Champion be allocated to the Leader of the Council.**

#### **3. Introduction and Background**

A report entitled 'Safeguarding Policy and Procedures' was considered by the Community Committee on 17 December 2014 when Members were reminded that Brentwood Borough Council had a duty to comply with Section 10 and 11 of the Children's Act 2004 (and by implication sections 157 and 175 of the Education Act), and as part of the Southend, Essex and Thurrock (SET) procedures to work together to protect children, young people and vulnerable adults. The Council also had guidance from the Department of Health 'No Secret: Guidance on developing multi-agency policies and procedures to protect vulnerable adults from abuse', 2000.

Members noted that the Council had undertaken a number of self audits for both Children and Young People and Adults which had informed the

Council's Safeguarding Policies and Procedures. The outcome from the 2013 audit identified some areas of improvement, especially around some new emerging issues such as Domestic Violence; Honour Based Abuse and Female Genital Mutilation; Child Sexual Exploitation and Counter Terrorism.

Due to the number of new and emerging issues the Council's own Safeguarding Policy and Procedures and Safeguarding Action Plan had been reviewed and revised for Member approval.

The recommendations in the report were resolved unanimously as follows, that:

1. Members agree to the revised Safeguarding Policy and Procedures appended to the report.
2. Members agree that Officers will implement the Safeguarding Action Plan 2015/16.
3. Members recommend that the Strategic Safeguarding Lead be assigned to the (Acting) Chief Executive and the Safeguarding Member Champion be allocated to the Leader of the Council, to be agreed at Ordinary Council.

#### **4. Issue, Options and Analysis of Options**

- 4.1 The Council had undertaken a number of self audits for both Children and Young People and Adults which had informed the Council's Safeguarding Policies and Procedures. The outcome from the 2013 audit identified some areas of improvement and the resolution of the Community Committee addressed these.

#### **5. Reasons for Recommendation**

- 5.1 To assign a Strategic Lead and Member Champion for the Council's Safeguarding Policies and Procedures.

#### **6. Consultation**

- 6.1 The Community Committee had considered the report and the agenda had been publicly available.

#### **7. References to Corporate Plan**

- 7.1 Safeguarding covers a number of Corporate priorities but especially Housing, Health and Wellbeing – make sure that the more vulnerable residents in Brentwood are protected, and help goes to those most in need of it; Safe Borough – promote Brentwood as a safe place to live and celebrate our success; promote crime awareness and vigilance across Brentwood residents.

## **8. Implications**

### **Financial Implications**

**Name & Title: Chris Leslie – Financial Services Manager and Section 151 Officer**

**Tel & Email 01277 312542/Christopher.leslie@brentwood.gov.uk**

- 8.1 There are no further financial implications at this time.

### **Legal Implications**

**Name & Title: Chris Potter – Monitoring Officer and Head of Support Services**

**Tel & Email 01277 312860/Christopher.potter@brentwood.gov.uk**

- 8.2 Brentwood Borough Council has a duty to comply with Section 10 and 11 of the Children's Act 2004 (and by implications sections 157 and 175 of the Education Act), and as part of the Southend, Essex and Thurrock (SET) procedures to work together to protect children, young people and vulnerable adults. The Council also has guidance from the Department of Health 'No Secret: Guidance on developing multi-agency policies and procedures to protect vulnerable adults from abuse', 2000.

All other legal implications are set out within the Safeguarding Policy and Procedure.

### **Other Implications (where significant)**

#### **Equality and Diversity implications**

- 8.3 The Safeguarding Policy and Procedures sets out the Council's Safeguarding Policy and Procedures which covers the whole community, but in particular children, young people and vulnerable adults. Within the Policy there are a number of emerging issues which may affect some sections of the community more than others such as Honour Based Abuse and FGM.

#### **Risk Management implications**

- 8.4 The Council needs to ensure that staff, contractors, volunteers and Members are aware of the Safeguarding Policy and Procedures and adhere to safe working practices. Any procurement or contracting of services which relate to children, young people or vulnerable adults must ensure that they must evidence that they have robust safeguarding policies in place.

9. **Background Papers** (include their location and identify whether any are exempt or protected by copyright)

9.1 None.

**10. Appendices to this report**

- Appendix A – Report and appendices
- included in the agenda for the 17.12.14 Community Committee meeting.

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**24 March 2015**

**Ordinary Council**

## **Appointment of Electoral Registration Officer and Returning Officer**

**Report of:** *Christopher Potter, Monitoring Officer and Head of Support Services*

**Wards Affected:** *All*

**This report is:** *Public*

### **1. Executive Summary**

1.1 The Council must appoint a named individual to the roles of the Electoral Registration Officer and Returning Officer.

1.2 The purpose of this report is to make the appointments to these roles.

### **2. Recommendation(s)**

**2.1 That Graham Farrant be appointed as the Registration Officer under section 8 of the Representation of the People Act 1983.**

**2.2 That Graham Farrant be appointed as the Returning Officer under section 35 of the Representation of the People Act 1983.**

### **3. Introduction and Background**

3.1 There are parliamentary, borough and parish elections in May this year. There is a need now for the Council to appoint to the roles of the Electoral Registration Officer and Returning Officer.

3.2 Over recent years the roles of Electoral Registration Officer and Returning Officer have been undertaken by the Managing Director/Chief Executive.

### **4. Issue, Options and Analysis of Options**

4.1 The Council is required under section 8(2) of the Representation of the People Act 1983 to appoint an officer of the Council to be registration officer for any constituency or part of a constituency coterminous with or situated in the Borough known as the Electoral Registration Officer.

- 4.2 The Electoral Registration Officer is the person with statutory responsibility amongst other things for the creation and maintenance of the register of electors and the absent voters list. This person takes responsibility for publishing a revised electoral register and issuing monthly alterations notices.
- 4.3 The Council is required under section 35(1) of the Representation of the People Act 1983 to appoint an officer of the Council to be the returning officer for local elections i.e. county, borough and parish elections.
- 4.4 The returning officer for local elections may by writing under his hand appoint one or more persons to discharge all or any of his functions
- 4.5 Under section 28(1) of the Representation of the People Act 1983 the duties of the returning officer for a parliamentary election registration officer is discharged as acting returning officer by the registration officer.
- 4.6 An acting returning officer has power to appoint deputies to discharge all or any of those duties (see Section 28(5) of the Representation of the People Act 1983).
- 4.7 The Council therefore needs to formally appoint to these posts of Registration Officer and Returning Officer (for local elections), and it is recommended that the Chief Executive be duly appointed.

## **5. Reasons for Recommendation**

- 5.1 The appointments are legally required in order that the Council can continue to meet its statutory responsibilities in respect of electoral administration.
- 5.2 As stated at paragraph 3.2 to this report, the roles have in the past been allocated to the Managing Director/Chief Executive and Graham Farrant is the Council's Chief Executive and has previous experience in undertaking these roles.

## **6. Consultation**

- 6.1 None.

## **7. References to Corporate Plan**

- 7.1 None.

## 8. Implications

### Financial Implications

**Name & Title:** Chris Leslie, Financial Services Manager and Section 151 Officer

**Tel & Email:** 01277 312542 / Chris.Leslie@brentwood.gov.uk

8.1 None arising from this report.

### Legal Implications

**Name & Title:** Christopher Potter, Monitoring Officer and Head of Support Services

**Tel & Email:** 01277 312860 / christopher.potter@brentwood.gov.uk

8.2 The Representation of the People Act 1983 requires appointments to be made. Under Chapter 3 of the Council's Constitution, electoral matters are reserved to full Council (see Part 3.1, rule 1.2(i) on page 27).

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

8.3 None.

9. **Background Papers** (include their location and identify whether any are exempt or protected by copyright)

9.1 None.

10. **Appendices to this report**

None.

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