

CHAPTER 2

Articles of the Constitution



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 transparently;
- (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 meetings, the Council should choose that option which it thinks is closest to the purposes above.

The Council, Members and Officers may call upon the Monitoring Officer to provide an interpretation of any aspect of the Constitution from time to time.

The Procedural Rules provide mechanisms for interpreting and operating the Constitution. The Chairman of any meeting will have the final decision on the correct application of the procedure rules to said meeting, having taken into account the advice of the Monitoring Officer or the appointed governance officer present at the meeting.

ARTICLE 2 - MEMBERS OF THE COUNCIL

2.1 Composition and eligibility

- (a) **Composition.** The Council will comprise 39 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 Boundary Commission for England 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 regular election of at least one third of members will generally be held on the first Thursday in May in each year (for three out of four years, with the County Council election being held on the fourth year).
- (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) effectively represent the interests of their ward, and its residents and of individual constituents.
 - (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.
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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.
- (c) For these purposes, “confidential” and “exempt” information are as defined in the Access to Information Rules in Chapter 4 of this Constitution.
- (d) Members have a duty to declare interests as well as any gifts and hospitality they have received.

2.4 **Conduct**

Members will at all times observe the all appropriate Members’ Code of Conduct and have proper regard for the Code of Conduct on Planning Matters 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.

2.6 **Training**

The Council will ensure the Members have the opportunity for adequate training for their roles and duties.

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:

(a) Voting and Petitions

Residents on the electoral roll for the area have the right to vote and sign a petition to request a referendum for an elected Mayor form of governance. The Council's petition scheme Chapter 4, paragraph 12, enables residents' in the Borough to submit a petition on an issue of concern.

(b) Information

Residents have the right to:

- (i) attend meetings of the Council and its committees, and the sub committees except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
- (ii) see reports and background papers and any records of decisions made by the Council; and
- (iii) inspect the Council's accounts and make their view 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 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) The Council's Monitoring Officer about a breach of the Member's Code of Conduct.

3.2 **Residents' responsibilities**

Residents must not be violent, abusive or threatening to Members or Officers and must not wilfully harm things owned by the Council, Members or Officers.

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 FULL 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.

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, but does not include the approval of supplementary estimates, the setting of fees and charges and other minor variations to budget or capital programme, so far as these are delegated to an Officer or a Committee

4.2 Functions of the Council

Only the Council will exercise the following functions:-

- (a) adopting and changing the Constitution in Article 12
- (b) approving or adopting the policy framework, the budget and any application to the Secretary of State in respect of any Housing Land Transfer
- (c) appointing the Leader and Deputy Leader of the Council
- (d) Removal of the Leader or Deputy Leader of the Council
- (e) receiving any resignation of the Leader of the Council
- (f) Appointing the Mayor and Deputy Mayor of the Council
- (g) receiving any resignation of the Mayor or Deputy Mayor of the Council
- (h) to consider a vote of no confidence in the Mayor or Deputy Mayor of the Council
- (i) agreeing and/or amending the terms of reference for committees, deciding on their composition and making appointment to them (except for authorised substitution to Committees under Chapter 4 – Procedure Rules).

- (j) appointing representatives to outside bodies unless the appointment has been delegated by the Council;
- (k) adopting a members' allowances scheme under Chapter 6;
- (l) changing the name of the Borough,
- (m) conferring the title of Honorary Alderman/Alderwomen or Freeman, Freewomen and Freedom of the Borough
- (n) approving the appointment or dismissal of Statutory Officers
- (o) making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills;
- (p) all other matters which by law must be reserved to Council;
- (q) adoption of the Code of Conduct for Members;
- (r) approving the making of a virement or payment from the Council's reserves for values exceeding £200,000; and
- (s) determination of other matters appropriately referred to Council.

4.3 The Full Council is not required to approve.

- (i) amendment or revocations of any plan or strategy necessary to give effect to the requirements of the Secretary of State or Minister made when he was asked to approve it.
- (ii) amendment or revocations to any plan or strategy if the Council has delegated the powers to amend or revoke it to a Committee or Sub-Committee or officer, either in this Constitution or at the time is approved the plan or strategy.

4.4 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.

4.5 Responsibilities for Functions

The Council will maintain the tables in Chapter 3 of this Constitution setting out the responsibilities for the Council's functions including those responsibilities which are delegated to committees or officers.

ARTICLE 5 - ELECTION, ROLE AND FUNCTION OF THE MAYOR

The Mayor will be elected by the Council annually 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

The Mayor acts in a non-political capacity as a symbol of the Authority. On civic and ceremonial occasions the Mayor represents the Borough and its inhabitants and fulfils the role of ambassador for the Council, in its relationship with society at large.

5.2 Chairing the Council Meeting

The Mayor will be elected by Council annually. The Mayor will have the following responsibilities:-

- (a) to uphold and promote the purpose of the Constitution and to interpret the Constitution when necessary.
- (b) 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;
- (c) to ensure that the Council meeting is a forum for the debate of matters of concern to the local; .
- (d) to promote public involvement in the Council's activities;
- (e) to be the conscience of the Council; and
- (f) to attend such civic and ceremonial functions of the Council as their determines to be appropriate.

ARTICLE 6 - REGULATORY AND OTHER COMMITTEES

6.1 Appointment of Committees

The Council will appoint the Committees set out in Chapter 3 of this Constitution to discharge the functions as detailed in each Committee 's term of reference. All committees of the Council will be subject to the political balance rules as set out in s.15 of the Local Government Housing Act 1989.

6.2 Sub-Committee

A Committee may appoint a Sub-Committee of its members for a specific function within the Committee's terms of reference. A Sub-Committee will be subject to political balance rules and all usual rules of procedure applicable to an ordinary Committee.

Political balance, maybe not be applied to the membership of the Licensing sub-committee, due to the restriction placed upon Ward Members.

6.3 Working Groups

A Committee can form a working group to consider a topic informally and at pace. The membership of the working group will be decided by the Committee and will not be subject to the political balance rules not will substitutions be allowed as continuity of the membership is important. Meetings of the working group will not be held in public, and all agendas and minutes will not be publicly available. The working group will report back to the parent Committee with its findings.

ARTICLE 7 - AUDIT AND SCRUTINY COMMITTEE

7.1 Terms of reference

The Council will appoint an Audit and Scrutiny Committee to discharge the functions conferred by section 21 of the Local Government Act 2000 and set out in detail in Chapter 3 of this Constitution.

7.2 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.

7.3 **Specific functions**

7.3.1 **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.

7.3.2 **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.

7.3.3 **Annual report**

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

7.4 **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 8- JOINT ARRANGEMENTS

8.1 **Arrangement to promote Well-Being**

The Council in order to promote the economic, social or environmental well-being of its area, may:-

- (a) Enter into arrangements or arrangements with a person or body:
- (b) Co-operate with, or facilitate or co-ordinate the activities of, any person or body; and
- (c) Exercise on behalf of that person or body any functions of that person or body
- (d) Subject in all cases to compliance with relevant statutory provisions

8.2 **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) The political balance requirement do not apply to such appointments.

(d) 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.

8.3 **Access to information**

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

8.4 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 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.

8.5 Contracting Out

The Council may contract out to another body or organisation functions which may be exercised by an officer and which are subject to an order under section 70 of the Deregulation and Contracting Out Act 1994, or under contracting arrangements where the contractor acts as the Council's agent under usual contracting principle, providing there is no delegation of the Council's discretionary decision making.

ARTICLE 9 – OFFICERS

TERMINOLOGY

9.1 Management Structure

(a) **General**

The Full Council may engage such staff (referred to as officer) as it considers necessary to carry out its functions.

(b) **Chief Officers**

The Full Council will engage persons for the following posts, who will be designated Chief Officers :-

Post	Functions and Areas of Responsibility
Chief Executive (and Head of Paid Service)	Overall corporate management and operational responsibility (including overall management responsibility for all officers) as set out in the management structure in Part 7 of the Constitution. Ensuring appropriate 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).

(c) Head of Paid Service Monitoring Officer and Chief Finance (S. 151) Officer

The Council will designate the following posts as shown:-

Post	Designation
Chief Executive	Head of Paid Service
Director of People & Governance*	Monitoring Officer
Director of Resources*	Chief Finance (S.151) Officer

*or successor in title.

Such posts will have functions described in Article 10.2 - 10.4 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 and deployment of officers. This is set out at Part 7 of this Constitution.

9.2 Functions of the Head of Paid Service

(a) Discharge of functions by the Council

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

(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 he/she 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, officers 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 Full 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) Supporting the Standard Committee

The Monitoring Officer will contribute to the promotion and maintenance of high standard of conduct through provision of support to the Standards Committee

(d) Conducting Investigations

The Monitoring Officer will conduct investigations into matters of conduct and make reports and recommendation to Standards Committee.

(e) Providing advice

The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety and probity and budget and policy framework issues to all Members.

(f) Restrictions on posts

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

(g) Designation of Deputy

An officer will be designated by the Monitoring Officer to deputise for him/her during any absence.

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 Full Council and the Council's external auditor if he/she considers that any proposal, decision or course of action will involve incurring unlawful 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.

(e) Give financial information

The Chief Finance Officer will provide financial information to the media, members of the public as are in their opinion sufficient to all their duties to be performed.

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.

9.8 Pay Policy Statement

The Council is required by the Localism Act 2011 to annually approve and publish a pay policy statement that sets out:-

- (a) The remuneration of its Chief Officers
- (b) The remuneration of its lowest paid employees, and
- (c) The relationship between-
 - (i) The remuneration of its Chief Officers and
 - (ii) the remuneration of its employees who are not chief officers

ARTICLE 10 - DECISION MAKING

11.1 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.

11.2 Principles of decision making

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

- (a) Proportionality (i.e. the action must be proportionate to the desired outcome);
- (b) Due consultation and the taking of professional advice from officers;
- (c) Respect for human rights;
- (d) A presumption in favour of openness;
- (e) Clarity of aims and desired outcomes;
- (f) Consideration of all options available;
- (g) Only relevant matters to be taken into account;
- (h) Due weight to be given to all material considerations and;
- (i) Proper procedures shall be followed.

10.3 Decision making by the Full Council

The relevant Council Procedure Rules set out in Chapter 4 of this Constitution when considering any matter.

10.4 Decision making by Committee and Sub-Committee Established by this Council

Council Committee and Sub-Committees will follow those parts of the Committee and Sub-Committee Procedure Rules set out in Part 3 of this Constitution as apply to them.

10.6 Decision making by Council bodies Acting as a Tribunal

The Council, a member or a Officer acting as a tribunal or in a quasi-judicial manner or determining/considering (other than for the purpose of giving advice) the civil rights or obligations or the criminal responsibility of any

person they will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.

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 Part 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 Part 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

The Common Seal of the Council will be kept in a safe place in the custody of the Monitoring Officer. 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. The Common Seal will be affixed to those documents which in the opinion of the Monitoring Officer should be sealed. The affixing of the Common Seal will be attested by the Monitoring Officer or some other person authorised by them.

ARTICLE 12 - REVIEW AND REVISION OF THE CONSTITUTION

12.1 Duty to monitor and review the Constitution

The Monitoring Officer will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect and to bring forward any recommendations that are necessary

The Chief Finance Officer shall be responsible for keeping under review the Financial Regulation and Contract Procedure Rules set out in the Constitution and shall make any necessary amendment and revisions as are required from time to time. If revisions are made they should be reported to Full Council for approval.

12.2 Changes to the Constitution

Changes to the Constitution shall only be approved at a meeting of the Council after consideration of the proposal by the Monitoring Officer unless in the reasonable opinion of the Monitoring Officer a change is:

- (a) A legislative requirement
- (b) A minor variation which is of a non-substantive nature;
- (c) Required to be made to remove any inconsistency or ambiguity; or
- (d) Required to be made so as to put into effect any decision of the Council or its Committee, in which case the Monitoring Officer may take such a change and publicise such changes on the Council's website

Any such change made by the Monitoring Office shall come into force with immediate effect but shall be referred to Full Council as soon as reasonably possible and shall continue to have effect only if Full Council agrees.

Other changes to the Constitution shall come into effect at such a date as the Council may stipulate.

The Council should review the Constitution at least annually.

ARTICLE 13- INTERPRETATION AND PUBLICATION OF THE CONSTITUTION

13.1 Suspension of the Constitution

13.2 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 members of the Council are present and vote for the suspension by a majority.

14.1.3 Procedure to suspend.

A motion to suspend any rules will not be moved without notice and with at least one half of the whole number of Members are present. The extent and duration of suspension will be proportionate to the result to be achieved., taking account of the purpose of the Constitution set out in Article 1.

14.2 Interpretation

The ruling of the Mayor of the Council 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 give details of the website address for this Constitution to each Member of the authority upon delivery to him/her of that individual's declaration of acceptance of office on the Member first being elected to the Council and will provide a hard copy if so requested by the elected member.

(b) The Monitoring Office will ensure copies are available for inspection at the Town Hall, Libraries and other appropriate locations, and can be purchased by Members of the local press and the public on payment of a reasonable fee.

(c) The Monitoring Officer will ensure that the Constitution is published on the Council's website.

(d)The Monitoring Officer will ensure that the summary of the Constitution is made widely available within the area and is updated as necessary.