

PART 2

THE COUNCIL

Part 2: The Council

Introduction

1. The Full Council is the sovereign body of Tunbridge Wells Borough Council. It comprises 48 elected councillors and is responsible for agreeing the Constitution, the overarching Council Budget and a range of plans and strategies that, between them, govern how the Council is run and which committees, members and officers are empowered to do what. The Council is bound to exercise all its powers and duties in accordance with the law and this Constitution. Details of the various roles of councillors, independent members, officers and citizens and how they relate to each other are set out below. Details of delegations are set out in Part 3. Rules of procedure that govern how the Council and its various constituent bodies are set out in Part 4; with associated codes and protocols found in Part 6.

2. Functions of the Full Council

Full Council exercise some functions, others have been delegated to Council committees, portfolio holders and officers, all of which are set out in Part 3.

3. Elected Councillors

3.1. Composition and eligibility

3.1.1. Composition. The Full Council comprises 48 elected members, otherwise called councillors. One or more councillors 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.

3.1.2. Eligibility. Only registered voters of the borough or those living, working or owning property within the Borough of Tunbridge Wells will be eligible to be elected to the office of councillor.

3.2. Election and terms of office of councillors

3.2.1. The ordinary election of a third (or as near as may be to cover all those whose term of office has expired) of all elected councillors will normally be held on the first Thursday in May each year, except that in every fourth year thereafter there will not be a regular election. The terms of office of councillors 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.

3.3. Roles and functions of elected councillors

3.3.1. Key roles

All elected councillors are expected to:

- (a) participate in decision-making through Full Council and meetings of the various Council committees and sub-committees;
- (b) represent the Council in the whole community and on other bodies, where appropriate;
- (c) abide by the Council's Code of Conduct;
- (d) represent the community's interests (both individuals and local groups) and bring their views into the Council's decision making process;
- (e) actively encourage community participation and public involvement in decision making;
- (f) deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances;
- (g) balance and effectively represent the interests of their ward and of individual constituents;
- (h) contribute to decision making and scrutinise proposals and decisions and monitor how Council policy is implemented; and
- (i) promote equality and diversity in the Council's policies and practices.

3.3.2. Rights and duties

- (a) Councillors 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) Councillors will not make public any information which is confidential or exempt without the consent of the Council, or divulge information given in confidence to anyone other than a councillor or officer entitled to know it;
- (c) For these purposes, "confidential" and "exempt" information are defined in the Access to Information Rules at Appendix A to Part 4 of this Constitution;
- (d) Councillors will be given best available professional advice and support by Council officers;
- (e) Training will be given to councillors to support them in their duties.

3.4. Non-elected independent and co-opted members

Non-elected Independent members are those appointed by the Council to the Standards Committee (under S53 (4)(b) and S55 (6) (a) of the Local Government Act 2000) or to the Audit Committee.

3.4.1. Appointment of non-elected independent members

Non-elected independent members will be interviewed by a selection panel and their recommendation for appointment will be put to Full Council for its approval. The appointment will be for a fixed period of four years starting on the date of their appointment by Council, which may be renewable for one further term of four years.

3.4.2. Appointment of parish and town council representatives

Parish and town council representatives are nominated by the Kent Association of Local Councils and their recommendation for appointment will be put to Full Council for their approval. The appointment will be for a fixed period of four years starting on the date of their appointment by Council, which may be renewable for one further term of four years.

3.4.3. Co-opted members

Co-opted members are invited by committees to attend meetings in an advisory capacity as and when appropriate to matters under consideration.

3.4.4. Key roles

Non-elected independent members and co-opted members are appointed/invited to promote high standards and ensure that a non-partisan approach is taken in certain specified Council committees. They are expected to:

- (a) for independent members of the Standards Committee only, participate in decision-making and ensure the highest standards of conduct and ethics are followed in accordance with the members' Code of Conduct;
- (b) contribute to the good governance of the Council; and
- (c) promote equality and diversity in the Council's policies and practices.

3.4.5. Rights and duties

Non-elected independent members and appointed parish/town councillors are;

- (a) entitled to attend public meetings of other committees of the Council, but they do not have the right to participate in meetings of committees of which they are not members unless the Council has made provision for them to do so;
- (b) allowed to have rights of access to such documents, information, and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law. They will not be entitled to attend committees of which they are not a member when confidential items are discussed without the consent of the Chairman of that Committee (or in their absence, the Vice-Chairman) who will seek advice on appropriateness from the Monitoring Officer.

They will not be entitled to receive confidential reports submitted to committees of which they are not a member unless the Monitoring Officer agrees it is necessary for the proper discharge of their functions and it is in accordance with the law.

(c) not to 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 councillor or officer entitled to know it. For these purposes, “confidential” and “exempt” information are defined in the Access to Information Rules at Appendix A to Part 4 of this Constitution;

(d) entitled to expect the best available professional advice and support from Council officers; and

(e) entitled to receive training to support them in their roles and fulfilling their duties.

3.5. Conduct

All members are expected to observe the members’ Code of Conduct and the Protocol on Member/Officer Relations, and any other codes or protocols approved by the Council, as set out in Part 6 of this Constitution.

4. The Role of officers

4.1. Management structure

4.1.1. General. The Full Council may engage such staff (referred to as officers) as it considers necessary to carry out its functions. More information is contained in the Officer Employment Procedure Rules.

4.1.2. Chief Officers. The Full Council will engage persons for the following posts, who will be designated chief officers:

(a) Chief Executive (and Head of Paid Service)

Functions and areas of responsibility:

- (i) Overall corporate management and operational responsibility, including overall management responsibility for all officers;
- (ii) Provision of professional advice to all parties in the decision-making process; and
- (iii) Representing the Council on partnership and external bodies as required by statute or by the Council.

(b) Director of Change and Communities

Functions and areas of responsibility: Financial Services, Overview and Scrutiny, Performance Management, Committee and Democratic Services, Legal Services, Human Resources, Transformation and Delivery, Customer Access and Customer Care and Communications.

(c) Director of Regeneration and Sustainability

Functions and areas of responsibility: Planning Services, Sustainability and Economic Development and representing the Council as an unpaid Director on the Joint Venture between the Council and John Laing plc.

(d) Head of Paid Service, Monitoring Officer and Chief Financial Officer. The Council will designate the following posts:

(i) Chief Executive

Designation: Head of Paid Service

(ii) Legal Services Manager

Designation: Monitoring Officer

(iii) Head of Finance and Governance

Designation: Chief Finance Officer (normally also the Section 151 Officer)

Such posts will have the functions described at Part 3.

4.1.3. Structure. The Head of Paid Service will determine, maintain and publish a description of the overall departmental organisation of the Council showing the management structure and deployment of officers.

5. Members of the Community and the Council

5.1. Rights of Members of the Community

The public have rights to access information and to participate in local government. These are explained in more detail in the Access to Information Rules at Appendix A to Part 4 of this Constitution but include:

5.1.1. Voting and petitions. Those on the electoral roll for the Borough have the right to vote and sign a petition to request a referendum for an elected mayor form of Constitution.

5.1.2. Information. Members of the public have the right to:

- (a) attend meetings of the Council and its committees except when confidential or exempt information is likely to be disclosed, and the meeting or part of the meeting is therefore held in private;

- (b) attend meetings of the Cabinet and its committees except where confidential or exempt information is likely to be disclosed, and the meeting or part of the meeting is therefore held in private;
- (c) discover from the forward plan what key decisions are programmed to be taken by the Cabinet and when;
- (d) see reports and background papers, and any records of decisions made by the Council, committees and the Cabinet;
- (e) inspect the Council's accounts and make their views known to the external auditor; and
- (f) have access to the Council's Constitution.

5.1.3. Participation. Members of the public have the right to:

- (a) participate in the Council's question time (see Part 4, Council Procedure Rules);
- (b) contribute by attending and speaking at committee meetings and
- (c) petition the Council.

5.1.4. Complaints. Members of the public have the right to complain to:

- (a) the Council under its complaints scheme;
- (b) the Local Government Ombudsman after using the Council's complaints scheme;
- (c) the Standards Committee, through the Council's Monitoring Officer, about a breach of the members' Code of Conduct.

6. The make-up of the Council

6.1. Full Council is the sovereign body. However, in order to ensure the efficient conduct of its business, it delegates certain functions to a range of executive and non-executive committees, partnerships and to officers.

6.2. Cabinet is empowered to make decisions in accordance with the Council's Budget and Policy Framework (which is set by Full Council). Full details are provided in Part 3. Under section 101 of the Local Government Act 1972 executive functions may be delegated to single party committees or to individual members, or to officers.

6.3. The Council also delegates responsibility for a range of regulatory functions to the Council's Licensing and Planning Committees. These functions may not be delegated to single party committees nor to individual elected members. Further details are provided in Part 3.

6.4. The Council delegates responsibility for a range of functions concerning the governance, conduct and decision-making of the Council and its members to several committees. These functions may not be delegated to single party committees nor to individual elected members.

6.5. The Standards Committee is responsible for promoting high standards of conduct by members and for overseeing the Council's Code of Conduct. The Audit Committee is responsible for overseeing the Council's financial and regulatory probity including the Council's accounts, audit function and approach to risk management. The Council's overview and scrutiny committees (select committees) are responsible for reviewing Cabinet decisions (to ensure they are in accordance with the Budget and Policy Framework and they are soundly based and proportionate) and for a broader programme of policy reviews. The General Purposes Committee deals with a broad range of functions which are not fully captured within any other Council committee, including responsibility for by-laws, elections and some staffing-related matters.

6.6. Further details of the role and make-up of each committee and their delegations are provided in Part 3 and details of procedure rules relating to these committees are provided in Part 4.

7. Decision making

7.1. Responsibility for decision-making

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

7.2. Principles of decision-making

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

- 7.2.1. proportionality (i.e. the action must be proportionate to the desired outcome);
- 7.2.2. due consultation and the taking of professional advice from officers and statutory consultees;
- 7.2.3. respect for human rights;
- 7.2.4. a presumption in favour of openness;
- 7.2.5. clarity of aims and desired outcomes; and
- 7.2.6. inclusion in the written statement of every executive decision of:
 - (a) the reason for the decision, including details of any alternative options considered and rejected by the decision-making body; and
 - (b) a record of any conflict of interest declared by any member of the decision-making body.

7.3. Types of decision

7.3.1. Decisions Reserved to Full Council.

Decisions relating to the functions listed in Part 3 will be made by the Full Council and will not be delegated.

7.3.2. Key decisions.

- (a) A “key decision” means an executive decision which is likely to:
- (i) result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority’s budget for the service or function to which the decision relates; or
 - (ii) be significant* in terms of its effects on communities living or working in an area comprising two or more wards in the area of the local authority.
- (see: The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, Regulation 8.)

[*“Significant” means £250,000 or more when applied to expenditure or savings in a particular budget. In determining the meaning of “significant” for the purposes of paragraph (a) above, regard is to be had to any guidance for the time being issued by the Secretary of State, in accordance with section 38 of the Local Government Act 2000.]

(b) A decision taker may only make a key decision in accordance with the requirements of the Cabinet Procedure Rules set out in Part 4 of this Constitution.

(c) Once a matter has been the subject of a key decision, subsequent or ancillary consideration relative to the matter is not a key decision unless there has been a material change of facts or circumstances.

7.4. Decision-making by Full Council, Cabinet and Council Committees and Sub-Committees

All meetings of the Full Council, Cabinet, Council Committees and Sub-Committees will follow the Council Procedures Rules set out in Part 4 of this Constitution when considering any matter.

7.5. Decision-making by the Select Committees

The Select Committees will follow the Overview and Scrutiny Procedures Rules set out in Part 4 of this Constitution when considering any matter.

7.6. Decision-making by Council bodies acting as tribunals

The Council, its committees, a councillor or an officer acting as a tribunal or in a quasi-judicial manner or determining or considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person 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.

7.7. Decision-making by Officers

The Chief Executive, directors and heads of service to whom the Council has delegated any of the Council's powers may, subject to any legal restrictions, in turn delegate their powers to other Council officers, officers of another authority or consultants retained by the Council, subject to compliance with the following rules:

7.7.1. The delegation must be made in writing to a named officer (not a job title) and signed and dated by both the officer granting the delegation and by the delegated officer.

7.7.2. Normally, the delegation will prohibit the delegate from, in turn, delegating to another officer. Exceptionally, if further delegation is to be permitted, the terms must be specified, including imposition of these rules in writing, signed by both officers.

7.7.3. The delegation must specify:

- (a) recording and reporting arrangements,
- (b) compliance with any relevant Council policies,
- (c) any financial restrictions on the exercise of powers (e.g. authorised spending up to a specified limit) ,
- (d) any restrictions or conditions in the Constitution to the particular delegation,
- (e) any requirements to consult the Leader, portfolio holder(s) or committee chairman;
- and
- (f) any other conditions, restrictions or limitations

7.7.4. The Chief Executive is authorised to temporarily reallocate any delegation if the delegatee is unavailable.

7.8. Finance, Contracts and Legal Matters

7.8.1. Financial management

The management of the Council's financial affairs will be conducted in accordance with the financial rules set out in Part 5 of this Constitution.

7.8.2. Contracts

All contracts made by the Council will comply with the Contracts Procedure Rules set out in Part 5 of this Constitution.

7.8.3. 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 he or she considers such action is necessary to protect the Council's interests (full details are set out in the Scheme of Delegations to Officers in Appendix B to Part 3).

7.8.4. Authentication of documents

(a) 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 or her, unless any enactment otherwise authorises or requires, or the Council has given requisite delegated authority to another person.

(b) Any contract with a value exceeding £50,000 entered into on behalf of the local authority in the course of the discharge of an executive function will be made under the common seal of the Council attested in accordance with Council procedure as detailed in paragraph 7.8.5 below.

7.8.5. 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 any two of the following officers:

- (a) the Chief Executive;
- (b) the Monitoring Officer; and
- (c) any officer authorised to do so, in writing, by the Monitoring Officer.

7.8.6. Arrangements to promote well being

The Council or the Cabinet, in order to promote the economic, social or environmental well being of the Borough may:

- (a) enter into arrangements or agreements with any person or body;
- (b) co-operate with, 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.

7.8.7. Joint arrangements and shared service arrangements

7.8.7.1. The Council may establish joint arrangements or shared service arrangements with one or more local authorities to exercise functions which are not executive functions in any of the participating authorities, or to advise the Council. Such arrangements may involve the appointment of a joint committee with these other local authorities.

7.8.7.2. The Cabinet may establish joint arrangements with one or more local authorities to exercise functions which are executive functions. Such arrangements may involve the appointment of joint committees with these other local authorities.

7.8.7.3. Except as set out below, the Cabinet may only appoint Cabinet members to a joint committee and those members need not reflect the political composition of the local authority as a whole.

7.8.7.4. The Cabinet may appoint members to a joint committee from outside the Cabinet in the following circumstances:

- (i) The joint committee has functions for only part of the area of the authority and that area is smaller than two-fifths of the authority by area or population. In such cases the Cabinet may appoint to the joint committee any councillor who is a member for a ward which is wholly or partly contained within the area;
- (ii) The political balance requirements do not apply.

7.8.7.5. Details of any joint arrangements including any delegations to joint committees are reflected in the Council's scheme of delegations in Part 3 of this Constitution.

7.8.8. Access to information

- (a) The Access to Information Rules at Appendix A to Part 4 of this Constitution apply.
- (b) If all the members of a joint committee are members of the executive in each of the participating authorities its access to information regime is the same as that applied to the executive.
- (c) If the joint committee contains members who are not on the executive of any participating authority the access to information rules in Part V of the Local Government Act 1972 will apply.

7.8.9. Delegation to and from other local authorities

- (a) The Council may delegate non-executive functions to another local authority or, in certain circumstances, to the executive of another local authority.
- (b) The Cabinet may delegate certain executive functions to another local authority or the executive of another local authority in certain circumstances.
- (c) The decision as to whether or not to accept such a delegation from another local authority is reserved to the Full Council.

7.9. Contracting out

The Council, in respect of functions which are not executive functions, and the Cabinet, in respect of executive functions, 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 principles, provided there is no delegation of the Council.