

How decisions are made at Breckland District Council

The Constitution

The Constitution sets out how the Council operates, how decisions are made and the procedures to be followed to ensure that they are efficient, transparent and accountable to local people. Some parts of the Constitution are pre-determined by law, but others are relevant only to Breckland District Council.

The whole document can be viewed on the Council's website –
<https://democracy.breckland.gov.uk/ieListDocuments.aspx?MId=4092>

The Council

The Council is comprised of 49 Councillors (Members), elected every four years. Councillors are democratically accountable to residents of their ward. The overriding duty of Councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.

Councillors are required to follow a Breckland Code of Conduct in order to ensure high standards in the way they carry out their duties.

All Councillors meet together as the full Council and these meetings are normally open to the public. Here, Councillors decide the Council's overall policies and set the budget and Council Tax each year. The functions and roles of Council include:

- To adopt the Constitution and any subsequent changes to it;
- To determine the decision-making structure of the Council and its internal procedural rules;
- To elect annually the Chairman and Vice-Chairman of the Council (who cannot be members of the Cabinet);
- To elect the Leader and note the appointment of the Deputy Leader and the Cabinet;
- To make appointments to committees;
- To provide the forum for all Members of the Council to consider and decide the Council's Policy Framework and Budget (which is submitted for approval by the Leader and Cabinet);
- To take decisions in respect of functions that are normally the responsibility of the Leader and Cabinet, but which in certain instances are not in accordance with the Policy Framework or Budget agreed by the Council;
- To take decisions in respect of functions which are not the responsibility of the Leader and Cabinet, and which have not been delegated by the Council to committees, sub-committees or officers;
- To provide a central forum for debate and gives the opportunity for Councillors and, at the discretion of the meeting Chairman, members of the public, to ask questions about the Council or matters affecting the Council;
- To allow questions to be put to the Leader and Cabinet;

- To receive reports and to confirm or otherwise deal with the recommendations of the Cabinet or Council committees upon matters which are reserved to the Council for decision;
- To direct the Overview & Scrutiny Commission with regard to carrying out any programme of work or investigation;
- To receive reports and recommendations from Portfolio Holders, the Head of Paid Service (Chief Executive), Executive Directors and Monitoring Officer;
- To adopt the Council's Code of Conduct;
- To make or confirm the appointment of Chief Officers;
- To determine those matters which must, under current legislation, be decided by the Council and not be delegated to a committee or an officer.
- The Chairman of the Council chairs full Council meetings and has a traditional ceremonial/civic role.

The Executive (also known as Cabinet)

The current decision-making structure for the Council is based on the strong Leader and Executive (or Cabinet) model. This was initially adopted as a consequence of the Local Government Act 2000 and revised in 2011 following the enactment of the Local Government and Public Involvement in Health Act 2007.

Alternative models of decision-making available under the Localism Act 2011 include a Mayor and Cabinet Executive Model (where the mayor is directly elected by the electorate) or a 'committee system' where decision-making powers are devolved to a number of committees rather than to an individual.

Breckland District Council's Cabinet

The Leader of the Council is elected for a period of four years, remaining in office until the first Annual General Meeting of Council following the next Council elections. The Leader determines the size and composition of the Cabinet (up to a maximum of 9 Members). The Leader also decides Cabinet Members' portfolios of responsibility and the extent to which each of them is able to make decisions on an individual basis. The Leader will appoint a Deputy Leader who also serves a four-year term.

There is provision in the Constitution for the removal of the Leader of the Council by resolution of the full Council before the expiry of his/her four-year term.

The Cabinet remains collectively responsible for recommending an overall budget and the policies that make up the Council's policy framework to the full Council. The Cabinet is responsible for day-to-day decision-making, delivering and implementing the budget and policies that have been agreed by the Council, and is the focus for forming partnerships with other key organisations to address local needs.

The current Cabinet comprises the Leader of the Council, a Deputy Leader of the Council and Portfolio Holders for: Corporate Strategy & Investment, Finance & Delivery, People & Information, Place (health lead), Assets, Growth and Governance.

The Leader and Cabinet are held to account by the Overview and Scrutiny Commission, which are made up of Councillors from all of the political groups represented on the Council.

Key Decisions

When major (known as 'key') decisions are to be discussed or made by the Cabinet, they are published on a monthly basis in the Council's Notice of Forthcoming Key Decisions. Under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, this document must be published on the authority's website at least 28 clear days before the decisions are due to be made.

If Key Decisions are to be discussed at a Cabinet meeting, the meeting will generally be open to the public, except where exempt (i.e. confidential) or personal matters are being discussed. Most commonly this involves commercially sensitive information. In the case of the latter, 28 days' notice must be given where it is intended to hold all or part of a Cabinet (or sub-committee of Cabinet) meeting in private.

General Exception/Special Urgency Procedures

If a Key Decision has erroneously not been included in the Notice of Forthcoming Key Decisions, it may still be taken, provided five clear (working) days have elapsed between publishing a notice/informing the chairman of the Overview & Scrutiny Commission and the decision being taken (known as the General Exception Procedure). However, if it is not possible to give five clear days' notice, the Special Urgency Procedure may be followed which allows the decision to be taken with the consent of the Scrutiny Commission chairman.

The Cabinet is obliged to make decisions that are in line with the Council's overall policies and budget. However, if it wishes to make a decision that is outside the budget or policy framework, this must be referred to the Council for a collective decision (but see Urgent and Delegated Decisions) (see notice of public and private meetings below).

A Key Decision is defined as any executive (i.e. Cabinet) decision that:

- involves expenditure or savings exceeding 25% of the budget sum approved for a particular service or function.
- is significant in terms of its effects on communities in two or more wards or electoral divisions

Notes:

1. The Council will, unless impracticable, treat as if they were Key Decisions any decisions which are likely to have a significant impact on communities in one ward. Where a decision is only likely to have a significant impact on a very small number of people in one ward, the decision-maker should ensure that those people are, nevertheless, informed of the forthcoming decision in sufficient time for them to exercise their right to see the relevant papers and make an input into the decision-making process.
2. In considering whether a decision is likely to be significant, a decision-maker will also need to consider the strategic nature of a decision and whether the outcomes have an impact for better or worse on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality affected. Regard should be given to the underlying principles of open, transparent and accountable decision-making of the Constitution to ensure that there is a presumption towards openness.

Notice of Public and Private Meetings

The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 introduced, amongst other things, new requirements regarding the procedures to be followed prior to public and private meetings. Where a meeting is to be held at which exempt (i.e. confidential) information will be considered - and the press and public are to be excluded from the meeting accordingly - notices must be published at least 28 and 5 clear days in advance of the meeting, stating why all or part of the meeting will be held in private and giving details of any representations received as to why the meeting should be held in public. For public meetings (i.e. where the public and press will not be excluded), notice of the meeting must be given at least 5 clear days before the meeting takes place. These notices must be published on the authority's website. Where the authority is unable to comply with the 28-day notice rule, agreement must be sought from the chairman of the Overview & Scrutiny Commission for the decision to be taken and a notice published to that effect.

Advisory Groups

Advisory groups can be appointed by the Leader or the Cabinet to support their work on specific projects or on specific functions or activities. They operate informally, are broadly (but not always) politically balanced and are chaired by a member of the Cabinet. These groups allow other Members of the Council who are not members of the Cabinet to contribute to project development and to advise on certain functions/activities before determination of the matter by the Executive, and away from the formal Council meetings and overview and scrutiny committee process. The groups can also make reports and give recommendations to the Cabinet. However, the decision must always be made by the Executive (either the Leader, Cabinet or an individual Portfolio Holder).

Urgent Business

Every authority makes arrangements to enable urgent business to be dealt with when the matter cannot wait until the next meeting of the appropriate committee. Arrangements for handling urgent business at committee or sub-committee meetings are now governed by statute which requires the Chairman's approval before an urgent item can be considered and for the reason for the urgency to be recorded in the minutes. The reasons given by the Chairman for accepting urgent business should be legitimate ones; political expediency or forgetfulness on the part of the reporting officers do not accord with the spirit of legislation. Urgent executive decisions which are contrary to the Council's budget or policy framework may be taken by the Leader, a Portfolio Holder or an officer, provided it is not practicable to convene a quorate meeting of Full Council and the chairman of the Overview & Scrutiny commission has given his/her consent.

The Constitution also lists those matters that are delegated to the Leader, individual Portfolio Holders and officers, where the decision may be taken by an individual without reference to Cabinet or Council (see Part 3(c) – Responsibility for Executive Functions; and Part 3(f) [Officer Delegations]).

The Scheme of Officer Delegations set out at Section 3(f) of the Constitution may be amended by the Council or the relevant committee or sub-committee in relation to Council functions, and by the Leader in relation to executive functions.

Overview and Scrutiny Commission

The Overview & Scrutiny Commission fulfils four key functions:

- a) to review or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions whether by the Cabinet or another part of the Council or any of its committees;

- b) make reports or recommendations to the Council or the Cabinet in connection with the discharge of any functions;
- c) consider any matter which affects the Council's area or its inhabitants; and
- d) exercise the right to call in for reconsideration decisions made but not yet implemented by the Cabinet and Officers.

They will monitor and, if appropriate, challenge the decisions and policies of the Executive and the Council as a whole, with their recommendations aiming to advise and influence policies, budgets and service delivery. The Commission may also be consulted by the Executive or the Council on forthcoming decisions, and their views sought on areas of policy development.

One of the key tools of scrutiny is the 'call-in' procedure, which allows the Commission to scrutinise a decision made by the Executive/Cabinet **before** it has been implemented. In these circumstances, the Commission would examine the decision to establish whether it was appropriate and, if necessary, might then recommend that it be re-considered by the Executive. A 'call-in' may be activated by the Chairman of the Commission, a ward member (in relation to a matter in their ward) or two members of the Overview & Scrutiny Commission or any three members formally request in writing to the Senior Legal Officer before the end of the five clear working day period then that decision shall be referred to the Overview & Scrutiny Commission.

Outside the call-in procedure, the Commission considers various issues within its work programme which are normally based on matters going to Cabinet and Council, as well as any other topics as determined. These arrangements allow the committees to contribute to policy development and influence matters before they are submitted to Cabinet for consideration.

There is provision in the Constitution for call-in to be suspended in cases where the decision is urgent and any delay likely to be caused by the call-in process would seriously prejudice the Council's or public's interests. The Chairman (or in his/her absence the Vice-Chairman) of the Council's agreement is required in these circumstances.

Committees and Sub-Committees

The other committees appointed by Council carry out functions which are specifically not within the remit of Cabinet. Some of these functions are quasi-judicial and Members (and substitutes) who are appointed to these committees must have received appropriate training.

Planning Committee	-	determines planning applications and related matters, including enforcement.
Governance & Audit	-	provides independent scrutiny of the authority's accounts/finance, risk management, governance; internal and external audit.
Committee of the Licensing Authority	-	To deal with all matters relating to the discharge by the Council of its Licensing functions under the Licensing Act 2003 and gambling Act 2005, except for the requirement to determine the authority's Licensing Policy under section 5 of the Licensing Act 2003 and the Licensing Authority Policy Statement under section 349 of the Gambling Act 2005.
Licensing Committee	-	To deal with all Policy related decisions relating to Hackney Carriage & Private Hire vehicles, Operators and

Drivers, sex establishments, hypnotism, street trading and any other Licensing provisions that the authority is required to undertake not mentioned elsewhere in the Constitution including all functions detailed at part B of Schedule 1 of the 2000 regulations.

- | | | |
|-------------------------|---|--|
| Licensing Hearing Panel | - | To deal with all licensing applications, reviews etc. that are not the responsibility of the Licensing Panel appointed by the Committee of the Licensing Authority (which are responsible for Gambling Act 2005 & Licensing Act 2003 matters) |
| Licensing Panel | - | To deal with applications for grant, renewal, review or variations of premises licences, club certificates and personal licences under the Licensing Act 2003 and Gambling Act 2005 where a hearing is required because either relevant representations, or a valid review notice of a valid objections notice has been received by the authority. |

Meetings

Meetings are usually held at the Council's offices in Dereham. The procedures to be followed at Council and other meetings are set out in Part 4 of the Constitution under the Rules of Procedure. The schedule of meetings is determined before the start of the new Council year and the schedule for 2019/20 is:

- 9 meetings of Council starting at 10.00am on Thursday mornings;
- 9 meetings of Cabinet starting at 9.30am on Tuesdays;
- 13 meetings of Planning Committee starting at 9.30am on Mondays;
- 8 meetings of Overview & Scrutiny Commission starting at 10.00am on Thursdays;
- 4 meetings of Licensing/Committee of the Licensing Authority starting at 10.00am the latter immediately following the Licensing Committee; and
- 5 meetings of the Governance & Audit Committee starting at 10.00am on Wednesdays.

The Licensing Panel/Hearing Panels meet whenever there is business to carry out and the start time can vary.

The length of meetings can vary depending on the volume and complexity of matters to be discussed.

All meetings must be publicised in advance and the list of matters to be debated must be shown on the agenda. Agendas are published on the Council's website, 5 clear (working) days in advance of the meeting and reports on the various items are attached to the agenda. Where a matter must be considered in private, the reason for this is shown on the agenda together with the title of the report. There are strict rules governing the consideration of confidential matters, and the press and public must leave the meeting when these items are debated.

Members of the Council receive their agendas electronically via a notification email. When Members know what business is to be dealt with, they should identify whether they have a Disclosable Pecuniary Interest or an Other Significant Interest in any item (see Code of Conduct). This must be declared at the meeting, and may be sufficient reason for them to withdraw from the meeting during the consideration of that item. If a Member is unable to attend a meeting they may appoint a substitute from within their own political group. Details of the substitution must be communicated to a member of the Democratic Services Team before the meeting commences. Any Member can come to listen to debates, but may only vote if he/she is a member of the committee.

After the meeting the minutes – a formal record of the decisions made – are produced and published.

Proper preparation for a meeting is vital, so that Members involved in decision-making are: a) clear on the issues to be decided; b) are able to ask pertinent questions; and c) in a position to make an informed decision. Officers are always available before the meeting to explain or elaborate on details. Councillors should come to a meeting with an open mind and hear all aspects of the issue before making up their minds, otherwise it could appear to the public that they have pre-determined the issue. Understanding the rules of debate helps the meeting to run efficiently and effectively.

Officers attend meetings to give professional and impartial advice, and to ensure that the proceedings are conducted in accordance with the Constitution and accurately recorded.

Code of Conduct

Declarations of Interest at Meetings

Members must familiarise themselves with the Code of Conduct. This sets out the standard of conduct that is expected of Members when acting in that capacity.

In relation to meetings, Members should ensure that they declare any Disclosable Pecuniary Interest (DPI) under the relevant agenda item and in certain cases leave the room during consideration of the item or not take part in the debate or vote on the matter. Where Members are unsure whether an interest exists, they should seek advice from the Monitoring Officer or a Democratic Services Team member before the meeting. Members should be mindful that participation in discussions or voting in a meeting on a matter in which the Member has a DPI is a criminal offence.

Further guidance may be found in the Department for Communities and Local Government's *Openness and Transparency on Personal Interests: Guidance for Councillors* (March 2013).

Predisposition, Predetermination and Bias

Predetermination or bias are indicative of approaching a decision with a closed mind, whereas predisposition indicates that the Member has an open mind and is willing to listen to all the information presented at the meeting - albeit that he/she may have expressed some views on the matter before the meeting. Clearly expressing an intention to vote in a particular way before a meeting or stating firm views for or against a proposal would be seen as predetermination or bias and could leave the committee's decision susceptible to challenge by Judicial Review. Members who feel that they have predetermined their position should not participate in discussions or voting on the matter at the meeting, and must declare this before withdrawing from the meeting.

Planning Committee

Members of the Planning Committee should familiarise themselves with the Council's Planning Protocol for Members. This aims to ensure that, in the Planning process, there are no grounds for suggesting that those participating in the decision were biased or that the decision itself was unlawful, irrational or procedurally improper. Amongst other things, it gives guidance to Members on interests, lobbying, representations and contacts with applicants and developers.

All Members (not just those on the Committee) should familiarise themselves with the Local Government Association's Probity in Planning for Councillors and Officers guidance. Amongst other things, this clarifies how Members can get involved in Planning discussions and applications, on behalf of their communities, in a fair, impartial and transparent way. Again, copies can be downloaded from www.local.gov.uk

The Council's Staff

The people who work for the Council (known as 'officers') give advice, implement decisions and manage the day-to-day delivery of its services. Some officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely. A Protocol for Relationships between Members and Officers of a Local Authority - contained in the Constitution governs the relationship between officers and Members of the Council. Senior officers have powers delegated to them by Council or the Executive, in order to make decisions according to set criteria. This system avoids clogging up meetings with routine, uncontentious issues. The Scheme of Officer Delegations is set out in the Constitution (also see Urgent and Delegated Decisions).