

# How Decisions are Made at Dover 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 the Council operates in an efficient and transparent manner and is accountable to local people. Some parts of the Constitution are pre-determined by law, but others are relevant only to Dover District Council. The Constitution is divided into nine parts and the whole document can be viewed on the Council's website - <https://www.dover.gov.uk/Council--Democracy/Councillors,-Decisions--Meetings/PDF/Constitution-21-22-Issue-24-FINAL.pdf>

## The Council

The Council comprises 32 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 Kent Model Code of Conduct in order to ensure that they maintain 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 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 public forum whereby Members and the public may ask questions on matters relevant to the Council's functions and to bring forward matters for debate;
- 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 regarding matters which are reserved to the Council for decision;
- To direct any Scrutiny Committee with regard to carrying out any programme of work or investigation;
- To receive reports and recommendations from the Head of Paid Service (Chief Executive), Monitoring Officer and the Strategic Director (Corporate Resources);
- To adopt the Council's Code of Conduct;
- To make or confirm the appointment of Chief Officers;
- To determine those matters that 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.

#### *Dover 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 and Portfolio Holders for: Community and Corporate Property (currently also Deputy Leader); Finance, Governance, Digital and Climate Change; Planning and Environment; Social Housing and Port Health; and Transport, Licensing and Regulatory Services.

The Leader and Cabinet are held to account by an Overview and Scrutiny Committee which is made up of Councillors from all of the political groups represented on the Council. It is a requirement that this committee is chaired by a member of an opposition party.

### *Key Decisions*

When major (known as 'key') decisions are to be taken by the Cabinet (or individually by the Leader, a Portfolio Holder or an officer), 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 and made available at the authority's offices 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 (see *Notice of Public and Private Cabinet Meetings*).

### *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 and Scrutiny Committee 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 Overview and Scrutiny Committee 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 Decisions Taken Between Meetings and Delegated Decisions).

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

- Results in the Council incurring expenditure which is, or savings which are, significant (£200,000 or more), having regard to the Council's budget for the service or function to which the budget relates;
- Is significant in terms of its effects on communities living or working in an area comprising two or more wards in the District; or
- Has a particularly significant impact on any community as experiencing social exclusion or discrimination, whether geography or interest defines that community and even if that community is only located in one ward in the area of the local authority.

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 Cabinet 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 of Cabinet. Where a meeting of the Cabinet 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 of Cabinet (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 and Scrutiny Committee for the decision to be taken, and a notice published to that effect.

### *Executive Committees*

The Leader may appoint a committee of the Executive to discharge executive functions. There is currently one Executive Committee which is charged with considering developer contributions matters (although it has not met for some time). The Committee comprises Cabinet Members appointed by the Cabinet and will take decisions related to developer contributions where these are not reserved to the full Cabinet.

### *Project 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). There are currently five Project Advisory Groups (PAGs): the Local Plan PAG, Dover Town Regeneration Advisory Board, Climate Change PAG, Homelessness PAG and the Investment Advisory Group.

### Decisions Taken Between Meetings and Delegated Decisions

The Constitution sets out the procedures to be followed in circumstances where a decision is urgent and cannot wait until the next meeting of Cabinet or Council or committee. Executive decisions may be taken by the Leader, an individual Portfolio Holder (paragraph 12 of Section 3C (General Responsibilities Delegated to all Members of the Executive) of Part 3 (Responsibility for Functions) of the Constitution) or an officer. Decisions which are a Council function may be taken by the Chief Executive, Head of Service or Operational Manager, in consultation with the Chairman or Vice-Chairman of the Council or relevant committee or sub-committee (paragraph 10 of Section 6A of Part 3). 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 (or the General Purposes Committee) and the chairman of the Overview and Scrutiny Committee has given his/her consent.

All urgent executive decisions are published via a Decisions Taken Between Cabinet Meetings notice. Urgent Council function decisions are publicised via the Members' Weekly News.

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 paragraph D2 of Section 3 (Specific Powers Delegated to Members of the Executive) of Part 3 and Section 6 (Scheme of Officer Delegations) of Part 3).

A Delegated Decision notice will be published for any Leader or Portfolio Holder decision that has been taken using powers that are specifically delegated to them in the Constitution. Certain types of officer decisions will also be published, including decisions:

- that are Key Decisions
- that relate to the granting of permission or a licence
- that affect the rights of an individual
- to award a contract or incur expenditure which will materially affect the Council's financial position
- where the officer deems that publication is in the public interest

In addition to the above, under section 9(E) of the Local Government Act 2000, the Leader has powers to discharge any executive function. Decisions taken by the Leader using these powers will be published by means of a Leader Decision notice.

The Scheme of Officer Delegations set out at Section 6 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. A decision notice (Arrangements Made by the Leader of the Council for the Discharge of Executive Functions under Section 14(2) of the Local Government Act 2000 (as amended)) will be published in the case of the latter.

### Overview and Scrutiny Committees

There is one Overview and Scrutiny Committee. This committee fulfils four key functions:

- a) to hold the Executive (and the Council) to account;
- b) to review, and assist in the development of, policy;
- c) to monitor the Council's performance, including its standards of service delivery against value-for-money criteria; and
- d) to represent community interests, e.g. by holding enquiries into matters of public concern.

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

### *Call-In*

One of the key tools of scrutiny is the 'call-in' procedure, which allows the Overview and Scrutiny Committee to scrutinise a decision made by the Executive *before* it has been implemented. In these circumstances, the Committee would examine the decision to establish whether it was appropriate and, if necessary, might then recommend that it be re-considered by the Executive. Call-in may be activated by

the Chairman of the Overview and Scrutiny Committee, the Controlling Group Spokesperson of that Committee (or in their absence the Vice-Chairman or Deputy Spokesperson of the Committee) or any three non-executive Members. Unless suspended (see below), all decisions made by Cabinet, an executive committee or individual Cabinet members, and Key Decisions made by Officers, are subject to a four-day period during which they may be called in for scrutiny.

Outside the call-in procedure, the Overview and Scrutiny Committee considers various issues within its work programme which is based on matters going to Cabinet and Council, as well as any other topics as determined. These arrangements allow the committee 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 (paragraph 18(l) (Overview and Scrutiny Procedure Rules) of Part 4 (Rules of Procedure)) 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 the 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. The Licensing Committee was established in accordance with the Licensing Act 2003, and is not required to comply with the rules for political balance.

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| Planning Committee   | - | determines planning applications and related matters   |
| Governance Committee | - | provides independent scrutiny of the authority's financial and non-financial performance, oversees the financial reporting process and sits as the Council's Audit Committee. The Committee is also responsible for functions relating to corporate service complaints and Member conduct. |
| Regulatory Committee | - | determines applications and appeals in respect of licences relating to taxis, animal boarding and breeding, street trading, house-to-house and street collections, sex shops and zoos, etc.  |
| Licensing Committee  | - | determines applications and reviews in respect of alcohol sales at premises. Applications are heard by Sub-Committees.   |

Other committees appointed by Council are: Appointments Committee, Electoral Matters Committee, General Purposes Committee, Joint Staff and Joint Health, Safety & Welfare Consultative Forums, Dover Joint Transportation Advisory Board and the East Kent Services Committee.

### Meetings

Meetings are usually held at the Council's offices at Whitfield. 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 programme of meetings is determined before the start of the new Council year and the programme for 2022/23 is:

6 meetings of Council starting at 6.00pm on Wednesday evenings;  
12 meetings of Cabinet starting at 11.00am on Mondays;  
12 meetings of Planning Committee starting at 6.00pm on Thursdays;  
11 meetings of Overview and Scrutiny Committee starting at 6.00pm on Mondays;  
5 and 11 meetings respectively of Licensing and Regulatory Committees, Licensing starting at a time agreed with the Chairman and the latter starting at 10.00am;  
5 meetings of Governance Committee starting at 6.00pm;  
4 meetings of Dover Joint Transportation Advisory Board starting at 6.00pm on Thursdays.

The Licensing Sub-Committees meet whenever there is business to be conducted. The Appointments, General Purposes and Electoral Matters Committees also only meet when there is specific business to be carried out.

The length of meetings can vary depending on the volume and complexity of matters to be discussed, but any meeting which is still in progress at 10.00pm must decide whether to continue or adjourn to a later date.

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 paper and 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 an iPad. 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 (subject to their having received suitable training in some cases). 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.

As soon as practicable after the meeting the minutes – a formal record of the decisions made – are produced and published. The minutes of Cabinet and Executive Committee meetings are known as the Record of Decisions.

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 are accurately recorded.

### Code of Conduct

#### *Declarations of Interest Made at Meetings*

Members must familiarise themselves with the Kent Model Code of Conduct for Members which was adopted by the Council on 26 June 2012. 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) or Other Significant Interest (OSI) under the relevant agenda item and leave the room during consideration of the item (unless, where an OSI is being declared, members of the public may make representations, in which case the Member may also make representations, answer questions or give evidence before leaving the room). Where Members are unsure whether an interest exists, they should seek advice from the Monitoring Officer or a Democratic Services Team member well in advance of 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 (as is failure to register the DPI within 28 days of election).

Where a Member does not have either a DPI or OSI but is of the opinion that, for transparency reasons alone, he/she should make an announcement in respect of a matter under consideration, they can make a Voluntary Announcement of Other Interests (VAOI). A Member who declares a VAOI may remain at the meeting and vote on the matter under consideration.

Further guidance may be found in the Ministry of Housing, Communities and Local Government's *Openness and Transparency on Personal Interests: Guidance for Councillors* (September 2013). Copies can be found in the Members' Resource Room.

#### *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 Code of Good Practice for Members (Part 5 [Codes and Protocols] of the Constitution). 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 – advice for councillors and officers making planning decisions'* 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 found in the Members' Resource Room or downloaded from [www.local.gov.uk](http://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 code of practice (Protocol for Relationships between Members and Officers of a Local Authority - contained in Part 5 of 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 Decisions Taken Between Meetings and Delegated Decisions).