

## REVIEW OF THE CONSTITUTION

### 1 PURPOSE OF REPORT

- 1.1 This report contains proposed changes to the Council's Constitution following meetings between the Review Committee project team and the Monitoring Officer.

### 2 INTRODUCTION

- 2.1 It had been agreed by the Committee that a project team would look at issues that had arisen with some of the sections of the Constitution. In addition, the Monitoring Officer had the aim of completing a comprehensive review of the Constitution as this had not happened since 2007. Under the circumstances it was agreed that the Monitoring Officer undertake a comprehensive review, submitting changes to the project team for discussion and to obtain its input.
- 2.2 The Monitoring Officer is engaging and working with the Leadership Team and other relevant officers to ensure that views and issues are considered by the project team.

### 3 GENERAL

- 3.1 The project has three objectives:
- To conduct a review of the Council's Constitution and recommend amendments to Full Council to ensure the efficient, economic and effective functioning of the Council so that it can meet its objectives.
  - To update the language used so that the Constitution is easier to read by both Members and residents.
  - To address and incorporate relevant concerns raised by Members.

#### **Progress of the Review**

- 3.2 This is the third report of the project group and includes changes to the code of good practice for Planning and also changes to Part 3 of the constitution.
- 3.3 The proposed are recorded on the attached appendix with the reasons for the change and a copy of the relevant sections of the Constitution are also attached with the proposed changes indicated by track changes on the documents.

### 4 RISK IMPLICATIONS

- 4.1 The review of the Constitution is necessary to ensure good governance, to avoid any unlawful decisions being taken and to reflect any changes to Council business and legislation.

**5 RESOURCE IMPLICATIONS**

5.1 None.

**6 LEGAL IMPLICATIONS**

6.1 The Local Government Act 2000 requires the Council to have and maintain a Constitution that is fit for purpose and the business of the Council.

**7 EQUALITY AND DIVERSITY IMPLICATIONS**

8 There are no equality implications of the recommendations within this report

**9 RECOMMENDATION**

9.1 It is proposed that the Committee **RECOMMENDS TO COUNCIL**

That the proposed changes attached to this report be adopted.



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**Background Papers:-**

None.

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If you would like this report in large print, Braille or another language please contact 01702 318111.

## Appendix

CONSTITUTION	CURRENT	RECOMMENDED CHANGE	REASONS
PART 5 Codes and Protocols			
Code of Good Practice for Planning Matters	Page 5.10 -17	Amendments within document	Amended and updated
PART 3 Responsibility for Functions			
Portfolios and Powers delegated to individual Members of the Executive	Pages 3.26 to 3.28	Amendment to remove individual names of the Portfolios. Keep only the Portfolio titles and information of their role.	The post is not tied to specific individual Members. If individual is no longer Portfolio, will not require formal amending of the Constitution.
To the Assistant Director, Legal Services	Page 3.31	To add the new Statutory Role of Data Protection Officer	To update inline with the new Data Protection legislation.

## CODE OF GOOD PRACTICE FOR PLANNING MATTERS

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## A. Introduction

### 1. The Aim of this Code of Good Practice

To ensure that in the planning process all decisions are unbiased, impartial, and well founded.

### 2. Your Role as a Member of the ~~Development Committee~~ **Planning Authority**

To control ~~& manage~~ development and to make ~~planning~~ decisions openly, impartially, with sound judgment and for justifiable ~~planning~~ reasons. You are also a democratically accountable decision ~~taker-maker~~ who has been elected to provide and pursue policies. You are entitled to be predisposed to make planning decisions in accordance with your political ~~or personal~~ views and policies provided that you have considered all material considerations and have given fair consideration to relevant points raised.

[Members should have read the reports prior to the Development Committee meeting.](#)

### 3. When the Code of Good Practice Applies

This code applies to Members at all times when involving themselves in the planning process (this includes when taking part in the decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public, and consultative meetings). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.

## B. Relationship to the Code of Conduct – Points for Members

- **Do** apply all of the rules in the Code of Conduct for Members **first**.
- **Do** then apply the rules in this Code of Good Practice for Planning Matters, which seek to explain and supplement the Code of Conduct for Members **for the purposes of development management ~~planning control~~**.
- Failure to abide by this Code of Good Practice for Planning Matters may put:-
  - the Council at risk of proceedings in respect of the legality or maladministration of the related decision;
  - **yourself** at risk of a complaint to the Monitoring Officer; and
  - **yourself** at risk of being named in a report made to the Council, or if the failure is also likely to be a breach of the interest provisions of the Localism Act 2011 (**as amended**), a complaint being made to the police to consider criminal proceedings.

## C. Development Proposals and Interests under the Members' Code **of Conduct**

- **Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter. **Visiting Members are also All Members in attendance are required to disclose the existence or nature of any interest.**
- ~~**Do then act in accordance with the Code of Conduct for Members.**~~

Where your interest is a Disclosable Pecuniary or Other Pecuniary interest:-

- **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.
- **Don't** get involved in the processing of the application, save as mentioned below.
- **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a Councillor. This would include, where you have an Other Pecuniary Interest in a proposal, using your position to discuss that proposal with officers or Members when other members of the public would not have the same opportunity to do so.
- **Do** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a Disclosable Pecuniary or Other Pecuniary or conflict of interest to an appropriate officer, in person or in writing, the Code places limitations **at the Development Committee** on you in representing that proposal. You may **listen to and observe Officers' presentation and any public speakers.** You may ~~address the~~ Committee but only to make a presentation in the same manner that would apply to a normal member of the public, **of up to five minutes,** after which you must leave the ~~room~~ **Chamber before the commencement of any debate on the application, whilst the**

~~meeting considers it (you~~You ~~-may not remain in the room where the meeting is held to observe the meeting's considerations on it from the public gallery).~~

- **Do** notify the Monitoring Officer of the details as soon as you become aware that you have a disclosable pecuniary interest or other pecuniary interest ~~or any potential conflict of interest.~~

## **D. Fettering Discretion in the Planning Process Bias and Predetermination**

### **For Members/Substitute Members of the Development Committee:**

- ~~Don't fetter your discretion and therefore your ability to participate in planning decision making by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter prior to formal consideration of the matter at the Committee and of your hearing the officer's presentation and evidence and arguments on both sides.~~

~~Fettering your discretion in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits. It is essential that Members attend with an open mind, prepared to consider all evidence and arguments presented to them. A Member who has, or is to have, a biased view or a pre-determined position cannot vote or participate in the relevant matter.~~

The test would be if a member of the public with knowledge and relevant facts would conclude that there is a possibility of bias that could prejudice your judgement. A perception of bias can be sufficient to render a planning decision vulnerable to legal challenge.

- **Do** be aware that in your role as an elected Member you are entitled, and are often expected, to have expressed views on planning issues and that these comments have an added measure of protection under the Localism Act 2011 [\(as amended\)](#).
- **Do** keep at the front of your mind that, when you come to make the decision, you
  - are entitled to have and to have expressed your own views on the matter, provided you are prepared to reconsider your position in the light of all the evidence and arguments;
  - must keep an open mind and hear all of the evidence before you, both the officers' presentation of the facts and their advice, as well as the arguments from all sides;
  - are not required to cast aside views on planning policy you held when seeking election or otherwise acting as a Member, in giving fair consideration to points raised;
  - are only entitled to take account of a material consideration and must disregard consideration irrelevant to the question and legal context at hand; and
  - are to come to a decision after giving what you feel is the right weight to those material considerations.
- **Do** be aware that you are likely to ~~have fettered your discretion to be biased and predetermined~~ where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal (this is



more than a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits).

- **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a Member of the Parish Council, for example, or both a District and County Councillor), provided that the proposal does not substantially affect the well being or financial standing of the consultee body, and you make it clear to the consultee body that:-
  - your views are expressed on the limited information before you only;
  - you must reserve judgment and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Committee and you hear all of the relevant information;
  - you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee; and
  - your membership or role is a Non-Pecuniary Interest
- ~~Don't speak and vote on a proposal where you have fettered your discretion. You do not also have to withdraw, but you may prefer to do so for the sake of appearances.~~
- **Do** explain to the consultee body that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.
- **Do** take the opportunity to exercise your separate speaking rights as a Ward/Local Member where you have represented your views or those of local electors and have a personal interest in the matter ~~fettered your discretion~~, but do not have a disclosable or other pecuniary interest. Where you do:-
  - advise the proper officer or Chairman that you wish to speak in this capacity before commencement of the item;
  - remove yourself from the Member seating area for the duration of that item; and
  - ~~ensure that your actions are recorded.~~

## E. Contact with Applicants, Developers and Objectors

- **Do** refer those who approach you for planning, procedural or technical advice to officers.
- **Do** contact the Assistant Director, Planning & Regeneration Services where you think a formal meeting with applicants, developers or groups of objectors might be helpful. You should never seek to arrange that meeting yourself. If a meeting is organised, officers will ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.
- **Do** otherwise:-
  - follow the rules on lobbying as set out in part F below;
  - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
  - report to the Assistant Director, Planning & Regeneration Services any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

In addition, in respect of presentations by applicants/developers:-

- **Don't** attend a private planning presentation not open to the general public unless an officer is present and ~~/or it has been organised by officers~~ is open to all Members.
- **Do** attend a public meeting or exhibition to gather information about planning proposals.
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application; this will be carried out by the Development Committee.
- **Do** be aware that a presentation is a form of lobbying – you can express views, but must not give an indication of how you or other Members might vote.

## F. Lobbying of Councillors

- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality and therefore your ability to participate in the Committee's decision making to express an intention to vote one way or another or such a firm point of view that it amounts to the same thing.
- **Do** remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- **Do** promptly refer to the Assistant Director, Planning & Regeneration Services any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- **Do** copy or pass on any lobbying correspondence you receive to the Assistant Director, Planning & Regeneration Services at the earliest opportunity.
- **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including offers of gifts or hospitality), who will in turn advise the appropriate officers to investigate.
- **Do** note that, unless you have a Disclosable Pecuniary Interest or an Other Pecuniary Interest', you will not have fettered your discretion or breached this Code of Good Practice for Planning Matters through:-
  - listening or receiving viewpoints from residents or other interested parties;
  - making comments to residents, interested parties, other Members or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
  - attending a meeting with the developer or applicant organised by the Assistant Director, Planning & Regeneration Services that is conducted in accordance with the rules set out in the Code of Conduct and this good practice guide;
  - seeking information through appropriate channels; or
  - being a vehicle for the expression of opinion or speaking at the meeting as a Ward Member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

## G. Lobbying by Councillors

- **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals unless it is your intention to openly campaign on the matter. You should have no involvement in the decision-taking process in the matter and you should remove yourself from the Committee for the duration of that item
- **Do** feel free to join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, Ramblers Association or a local civic society, but disclose a Non-Pecuniary Interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgment and the independence to make up your own mind on each separate proposal.
- **Don't** ~~excessively~~ lobby fellow Councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
- **Don't** decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Members should vote on a planning issue.

## H. Site Visits

- **Do** request an early site visit [by contacting the relevant team leader](#) if you think one is required.
- **Do** try to attend site visits organised by the Council where possible.
- **Don't** request a site visit unless you feel it is strictly necessary because:-
  - particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
  - there are significant policy or precedent implications and specific site factors need to be carefully addressed.
- **Do** ensure that you report back to the Committee any information gained from the site visit that you feel would benefit all Members of the Committee.
- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- **Don't** hear representations from any other party, with the exception of the Ward Member(s) whose address must focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.
- **Don't** express opinions or views to anyone
- ~~**Don't** enter a site not open to the public which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias [unless:-](#)~~
  - ~~• [you feel it is essential for you to visit the site other than through attending the official site visit,](#)~~
  - ~~• [you have first spoken to the Assistant Director, Planning & Regeneration Services about your intention to do so and why \(which will be recorded on the file\); and](#)~~
  - ~~• [you can ensure you will comply with these good practice rules on site visits.](#)~~

## **I. Public Speaking at Meetings**

- **Don't** allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.
- **Do** ensure that you comply with the Council's procedures in respect of public speaking.

## **J. Officers**

- **Don't** put pressure on officers to put forward a particular recommendation (this does not prevent you from asking questions or submitting views to the Assistant Director, Planning & Regeneration Services, which may be incorporated into any Committee report).
- **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with an Assistant Director or those officers who are authorised by their Assistant Director to deal with the proposal at a Member level.
- **Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.
- **Do** give officers the opportunity to report verbally on all applications reported to the Development Committee for determination.

## K. Decision Making

—When making a decision on a planning application, Members must take a proactive role, and in accordance with the development plan, unless there are material considerations that indicate otherwise~~take a proactive role and take into account only material planning considerations~~. The National Planning Policy Framework sets out a presumption in favour of sustainable development, and requires Members to approach decision-taking in a positive way, and to look for solutions rather than problems;~~decision-takers at every level should seek to approve applications for sustainable development where possible.~~

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—Members can come to a decision which differs from the recommendation of the ~~O~~officer, but it must be justified on planning grounds (based on the policies, development plans and material considerations). ~~Members are not experts in planning matters and should seek advice and guidance from Oofficers on the material issues and the weight they should be accorded in reaching a decision.~~~~E~~The evidence provided with ~~an~~the application would have been through the planning process and tested in accordance with legislation, formula~~es~~ and technical methodology.

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• Members must ~~give justified and robust~~material planning reasons, ~~and as it~~decisions may be subject to appeal, and an award of costs if a party has acted unreasonably, ~~or other challenge, so the reasons must be reasonable, in planning terms for a particular application, and defensible.~~

—Members should, in accordance with national policy, take a ~~proactive~~objective approach and ~~encourage~~facilitate appropriate development and make a decision taking into account the Council's own development plan, national policy and material considerations, including the comments and views of the statutory consultees and residents. Guidance on material consideration can be provided by the Assistant Director of Planning and Regeneration."Material considerations ~~may~~can also include:-

- Noise
- Effect on conservation area and listed buildings
- Layout and density
- Design, appearance and materials
- Nature conservation
- Previous planning decisions

~~The list is not exhaustive, and each case should be considered on its own merits.~~

~~The material weight to be given to the different considerations will vary according to the circumstances of the case.~~

~~Key points for decision-making to enable Members to come to an informed view include:-~~

- ~~• The Council's Local Plan which includes the Core Strategy, Allocations Plan as well as other adopted and emerging planning documents~~

- ~~• Other relevant policy considerations~~

- ~~• Results of technical consultation~~

- ~~• Other materials considerations~~

~~**Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation following a Weekly List report, you report/discuss or submit your planning reasons to with the Assistant Director, Planning & Regeneration Services in line with established procedure. A planning officer will then set out these planning reasons in a the report to the Committee you email the Leadership Support Team (leadershipsupportteam@rochford.gov.uk) and include the application number, address and the planning reasons for referral. If an application referred close to the deadline it may be prudent for a Member to telephone the Leadership Support team to ensure that the referral has been received prior to the deadline.~~



- **Do** comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan and the National Planning Policy Framework unless material considerations indicate otherwise.
- **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision, including any information presented through an addendum to a Committee report ~~or~~ and maybe reported verbally by officers.
- **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present during the entire debate on any particular item, including the officers' introduction to the matter.
- **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan, that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded.
- **Do** note that applications should not generally be deferred. Where they are deferred by Members, the robust material planning reasons for doing so must be clearly stated i.e. for clarification purposes or absence of information as requested by Members.
- **Do** be aware that in the event of an appeal the Council will have to justify the resulting decision and that there could, as a result, be a costs award against the Council, if the reasons for refusal cannot be substantiated and if the Council has been deemed to have not acted reasonably.

## L. Training

- **Don't** participate in a vote at meetings dealing with planning matters if you have not attended the mandatory required planning training prescribed offered by the Council.
- **Do** endeavour to attend any other specialised training sessions provided, ~~since these will be designed to extend your knowledge of planning law, policy, guidance, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.~~

## PART 3

# RESPONSIBILITY FOR FUNCTIONS

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## **RESPONSIBILITY FOR FUNCTIONS**

### **PART A**

#### **ALLOCATION OF RESPONSIBILITY FOR FUNCTIONS**

##### **1. INTRODUCTION**

- 1.1 Part 3 of this Constitution deals with the allocation of responsibility for undertaking the functions of the Council as a whole. The Council consists of a number of distinct parts the key ones being the Executive, (Leader and Executive) and the Full Council who bear primary responsibility for the functions and powers of the Authority. However, in order to operate effectively powers are delegated to individual Members, Committees and Officers.
- 1.2 This Part sets out the way these functions and powers have been distributed in order that there is clarity as to who may exercise powers or make decisions in the name of the Council.
- 1.3 Part 3 is divided into three sections dealing with the distribution of functions and exercise of powers by the Full Council, the Executive and Officers.
- 1.4 This Part of this Constitution should be read in conjunction with Articles 4 (The Full Council), 6 (The Executive), 7 (Overview and Scrutiny Committees), 8 (Regulatory and other Committees), 9 (Standards Committee), 11 (Officers) and 12 (Decision Making).
- 1.5 Part 3 of this Constitution shall be interpreted in accordance with the relevant provisions of the Local Government Act 2000, in particular Section 13 (Functions which are to be the responsibility of an executive), and The Local Authorities (Functions and Responsibilities)(England) Regulations 2000 (as amended). In the event of any conflict between this Part and a provision in any piece of legislation, the latter shall prevail.

##### **2. FUNCTIONS**

2.1 The Authority's functions may lawfully be exercised by:-

- (a) Full Council;
- (b) The Executive;
- (c) The Leader;
- (d) Executive Members;
- (e) Committees and Sub-Committees of the Council or of the Executive;
- (f) Joint Committees;
- (g) Officers of the Council;
- (h) Other persons so authorised where the law permits.

2.2 The Authority's functions fall into four categories:-

- (1) those functions that are by law the responsibility of the Full Council unless delegated (sole Council responsibility);
- (2) those functions that are by law partly the responsibility of the Full Council and partly the responsibility of the Authority's Executive (shared responsibility);
- (3) those functions where there is a local choice whether they are the responsibility of the Full Council or the Authority's Executive (local choice responsibility);
- (4) all other functions are by law the responsibility of the Authority's Executive (default Executive responsibility).

Reference to the "Executive" means the Leader and Executive Members.

### **3. SOLE RESPONSIBILITY OF FULL COUNCIL**

- 3.1 Decisions about the Council's policy framework and budget, and other constitutional matters may only be taken by Full Council. A full list of these matters is contained in Article 4 to this Constitution ('The Full Council'). The exercise of these functions may not be delegated to a committee or officer.
- 3.2 Full Council is also responsible for most regulatory functions and has established regulatory committees (such as the Development Committee and the Licensing Committee) to discharge these functions.
- 3.3 The Local Authorities (Functions and Responsibilities)(England) Regulations 2000 (as amended) gives effect to Section 13 of the Local Government Act 2000 by specifying which functions are not to be the responsibility of the Executive. These are set out in Table 1 which details the functions of Full Council which may be delegated to a committee or officer but cannot be undertaken by the Executive.

### **4. SHARED RESPONSIBILITY**

- 4.1 Some functions are partly the responsibility of the Full Council and partly the responsibility of the Executive. These are:-
  - (a) the budget and any plan or strategy for the control of the Council's borrowing or capital expenditure (capital plan);
  - (b) the policy framework, that is the plans and strategies which the Council approves or adopts.
- 4.2 The Executive will be responsible for preparing the draft budget, draft plans and strategies and proposing them to the Full Council.
- 4.3 The Full Council will be responsible for:-

- (a) adopting or approving the draft budget, plan or strategy;
  - (b) asking the Executive to reconsider it; or
  - (c) amending the budget, plan or strategy.
- 4.4 The Executive will be responsible for implementing the Council's policies and spending the budget in accordance with the Council's financial rules and regulations. It will also be responsible for implementing and regularly monitoring treasury management policies and practices.
- 4.5 Some plans and strategies require ministerial approval after the Council has approved them. If the minister requires any amendments to those plans and/or strategies, the Executive will be responsible for making those amendments.
- 4.6 Table 2 sets out the shared responsibility functions.

## **5. LOCAL CHOICE FUNCTIONS**

- 5.1 In some cases there is a local choice as to whether the function is to be the responsibility of the Full Council or the Executive and Table 3 sets out whether the function is to be the responsibility of the Full Council or the Executive.

## **6. DEFAULT EXECUTIVE FUNCTIONS**

- 6.1 All other functions not so specified are to be responsibility of the Executive.
- 6.2 If a decision is the responsibility of the Executive, Full Council cannot overrule the Executive or give it instructions on how the decision should be made. However, in certain circumstances, Full Council can ask the Executive to reconsider decisions.

### **TABLE 1**

#### **FUNCTIONS WHICH CANNOT BE EXERCISED BY THE EXECUTIVE**

This Table sets out the functions, listed in Schedule 1 to The Local Authorities (Functions and Responsibilities)(England) Regulations 2000 (as amended), which cannot be the responsibility of the Executive and specifies which part of the Authority will be responsible for them. (Subject to the Scheme of Delegation to Officers set out in Part C of this Part)

Function	Provision of Act or Statutory Instrument
<b>A. Functions relating to town and country planning and development control</b>	
1.Power to determine application for planning permission.	Sections 70(1)(a) and (b) and 72 of the Town and Country Planning Act 1990
2.Power to determine applications to develop land without compliance with conditions previously attached.	Section 73 of the Town and Country Planning Act 1990.
3.Power to grant planning permission for development already carried out.	Section 73A of the Town and Country Planning Act 1990.
4.Power to decline to determine application for planning permission.	Section 70A of the Town and Country Planning Act 1990
5.Duties relating to the making of determinations of planning applications.	Sections 69, 76 and 92 of the Town and Country Planning Act 1990 and Articles 8, 10 to 13, 15 to 22 and 25 and 26 of the Town and Country Planning (General Development Procedure) Order 1995 (S.I. 1995/419) and directions made there under
6.Power to determine application for planning permission made by a local authority, alone or jointly with another person.	Section 316 of the Town and Country Planning Act 1990 and the Town and Country Planning General Regulations 1992 (S.I. 1992/1492)
7.Power to make determinations, give approvals and agree certain other matters relating to the exercise of permitted development rights.	Parts 6, 7, 11, 17, 19, 20, 21 to 24, 26, 30 and 31 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (S.I. 1995/418).
8.Power to enter into agreement regulating development or use of land.	Section 106 of the Town and Country Planning Act 1990.



<b>Function</b>	<b>Provision of Act or Statutory Instrument</b>
9. Power to issue a certificate of existing or proposed lawful use or development.	Sections 191(4) and 192(2) of the Town and Country Planning Act 1990
10. Power to serve a completion notice.	Section 94(2) of the Town and Country Planning Act 1990.
11. Power to grant consent for the display of advertisements.	Section 220 of the Town and Country Planning Act 1990 and the Town and Country Planning (Control of Advertisements) Regulations 1992
12. Power to authorise entry onto land.	Section 196A of the Town and Country Planning Act 1990
13. Power to require the discontinuance of a use of land.	Section 102 of the Town and Country Planning Act 1990.
14. Power to serve a planning contravention notice, breach of condition notice or stop notice.	Sections 171C, 187A and 183(1) of the Town and Country Planning Act 1990
15. Power to issue an enforcement notice.	Section 172 of the Town and Country Planning Act 1990
16. Power to apply for an injunction restraining a breach of planning control.	Section 187B of the Town and Country Planning Act 1990
17. Power to determine applications for hazardous substances consent, and related powers.	Sections 9(1) and 10 of the Planning (Hazardous Substances) Act 1990
18. Duty to determine conditions to which old mining permissions, relevant planning permissions relating to dormant sites or active Phase I or II sites, or mineral permissions relating to mining sites, as the case may be, are to be subject.	Paragraph 2(6)(a) of Schedule 2 to the Planning and Compensation Act 1991, paragraph 9(6) of Schedule 13 to the Environment Act 1995 (c. 25) and paragraph 6(5) of Schedule 14 to that Act.

<b>Function</b>	<b>Provision of Act or Statutory Instrument</b>
19.Power to require proper maintenance of land.	Section 215(1) of the Town and Country Planning Act 1990.
20.Power to determine application for listed building consent, and related powers.	Sections 16(1) and (2), 17, 27(2) and 33(1) of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990
21.Power to determine applications for conservation area consent.	Section 16(1) of the Planning (Listed Buildings and Buildings in Conservation Areas Act 1990, as applied by section 74(3) of that Act
22.Duties relating to applications for listed building consent and conservation area consent.	Sections 13(1) and 14(1) and (4) of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990 and regulations 3 to 6 and 13 of the Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) Regulations 1990 and paragraphs 8, 15 and 22 of Department of the Environment Circular 14/97.
23.Power to serve a building preservation notice, and related powers.	Sections 3(1) and 4(1) of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990.
24.Power to issue enforcement notice in relation to demolition of unlisted building in conservation area.	Section 38 of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990.
25.Powers to acquire a listed building in need of repair and to serve a repairs notice.	Sections 47 and 48 of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990.
26.Power to apply for an injunction in relation to a listed building.	Section 44A of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990
27.Power to execute urgent works.	Section 54 of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990.

Function	Provision of Act or Statutory Instrument
<b>B. Licensing and registration functions (in so far as not covered by any other section of this Table)</b>	
1.Power to issue licences authorising the use of land as a caravan site ("site licences").	Section 3(3) of the Caravan Sites and Control of Development Act 1960
2.Power to license the use of moveable dwellings and camping sites.	Section 269(1) of the Public Health Act 1936
3.Power to license hackney carriages and private hire vehicles.	(a) as to hackney carriages, the Town Police Clauses Act 1847 as extended by section 171 of the Public Health Act 1875 and section 15 of the Transport Act 1985 and sections 47, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976  (b) as to private hire vehicles, sections 48, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976.
4.Power to license drivers of hackney carriages and private hire vehicles.	Sections 51, 53, 54, 59, 61 and 79 of the Local Government (Miscellaneous Provisions) Act 1976.
5.Power to license operators of hackney carriages and private hire vehicles.	Sections 55 to 58, 62 and 79 of the Local Government (Miscellaneous Provisions) Act 1976.
6.Power to register pool promoters.	Schedule 2 to the Betting, Gaming and Lotteries Act 1963 as saved for certain purposes by article 3(3)(c) of the Gambling Act Order
7.Power to grant track betting licences.	Schedule 3 to the Betting, Gaming and Lotteries Act 1963 as saved for certain purposes by article 3(3)(d) and 4 of the Gambling Act Order

<b>Function</b>	<b>Provision of Act or Statutory Instrument</b>
8.Power to license inter-track betting schemes.	Schedules 5ZA to the Betting, Gaming and Lotteries Act 1963 as saved for certain purposes by article 3(3)(e) of the Gambling Act Order
9.Power to grant permits in respect of premises with amusement machines.	Schedule 9 to the Gaming Act 1968 as saved for certain purposes by article 4(2)(1) and (m) of the Gambling Act Order
10.Power to register societies wishing to promote lotteries.	Schedule 1 to the Lotteries and Amusements Act 1976 as saved for certain purposes by article 5(2)(a) and (3) of the Gambling Act Order
11.Power to grant permits in respect of premises where amusements with prizes are provided.	Schedule 3 to the Lotteries and Amusements Act 1976 as saved for certain purposes by article 5(2)(d) and (5) of the Gambling Act Order
12.Power to issue cinema and cinema club licences.	Section 1 of the Cinema Act 1985
13.Power to issue theatre licences.	Sections 12 to 14 of the Theatres Act 1968
14.Power to issue entertainments licences.	Section 12 of the Children and Young Persons Act 1933, section 52 of, and Schedule 12 to, the London Government Act 1963, section 79 of the Licensing Act 1964, sections 1 to 5 and 7 of, and Parts I and II of the Schedule to, the Private Places of Entertainment (Licensing) Act 1967 and Part I of, and Schedules 1 and 2 to, the Local Government (Miscellaneous Provisions) Act 1982
15.Power to license sex shops and sex cinemas.	The Local Government (Miscellaneous Provisions) Act 1982, section 2 and Schedule 3.
16.Power to license performances of hypnotism.	The Hypnotism Act 1952

<b>Function</b>	<b>Provision of Act or Statutory Instrument</b>
17.Power to license premises for acupuncture, tattooing, ear-piercing and electrolysis.	Sections 13 to 17 of the Local Government (Miscellaneous Provisions) Act 1982.
18.Power to license pleasure boats and pleasure vessels.	Section 94 of the Public Health Acts Amendment Act 1907 (c. 53)
19.Power to register door staff.	Paragraphs 1(2) and 9 of Schedule 12 to the London Government Act 1963 (c. 33) and Part V of the London Local Authorities Act 1995
20.Power to license market and street trading.	Part III of, and Schedule 4 to, the Local Government (Miscellaneous Provisions) Act 1982, Part III of the London Local Authorities Act 1990 (c. vii) and section 6 of the London Local Authorities Act 1994
21.Power to license night cafes and take-away food shops.	Section 2 of the Late Night Refreshment Houses Act 1969 (c. 53) , Part II of the London Local Authorities Act 1990 and section 5 of the London Local Authorities Act 1994.
22.Duty to keep list of persons entitled to sell non-medicinal poisons.	Sections 3(1)(b)(ii), 5, 6 and 11 of the Poisons Act 1972
23.Power to license dealers in game and the killing and selling of game.	Sections 5, 6, 17, 18 and 21 to 23 of the Game Act 1831 sections 2 to 16 of the Game Licensing Act 1860 section 4 of the Customs and Inland Revenue Act 1883 sections 12(3) and 27 of the Local Government Act 1874 and section 213 of the Local Government Act 1972
24.Power of register and license premises for the preparation of food.	Section 19 of the Food Safety Act 1990
25.Power to license scrap yards.	Section 1 of the Scrap Metal Dealers Act 1964

<b>Function</b>	<b>Provision of Act or Statutory Instrument</b>
26. Power to issue, amend or replace safety certificates (whether general or special) for sports grounds.	The Safety of Sports Grounds Act 1975 (c. 52)
27. Power to issue, cancel, amend or replace safety certificates for regulated stands at sports grounds.	Part III of the Fire Safety and Safety of Places of Sport Act 1987
28. Power to issue fire certificates.	Section 5 of the Fire Precautions Act 1971
29. Power to license premises for the breeding of dogs.	Section 1 of the Breeding of Dogs Act 1973 and section 1 of the Breeding and Sale of Dogs (Welfare) Act 1999
30. Power to license pet shops and other establishments where animals are bred or kept for the purposes of carrying on a business.	Section 1 of the Pet Animals Act 1951; section 1 of the Animal Boarding Establishments Act 1963 the Riding Establishments Acts 1964 and 1970 (1964 and 1970 section 1 of the Breeding of Dogs Act 1973 and sections 1 and 8 of the Breeding and Sale of Dogs (Welfare) Act 1999.
31. Power to register animal trainers and exhibitors.	Section 1 of the Performing Animals (Regulation) Act 1925
32. Power to license zoos.	Section 1 of the Zoo Licensing Act 1981
33. Power to license dangerous wild animals.	Section 1 of the Dangerous Wild Animals Act 1976
34. Power to license knackers' yards.	Section 4 of the Slaughterhouses Act 1974. See also the Animal By-Products Order 1999 (S.I. 1999/646).
35. Power to license the employment of children.	Part II of the Children and Young Persons Act 1933 byelaws made under that Part, and Part II of the Children and Young Persons Act 1963

<b>Function</b>	<b>Provision of Act or Statutory Instrument</b>
36. Power to approve premises for the solemnisation of marriages.	Section 46A of the Marriage Act 1949 and the Marriages (Approved Premises) Regulations 1995 (S. I. 1995/510)
37. Power to register common land or town or village greens, except where the power is exercisable solely for the purpose of giving effect to—  (a) an exchange of lands effected by an order under section 19(3) of, or paragraph 6(4) of Schedule 3 to, the Acquisition of Land Act 1981 (c. 67) or  (b) an order under section 147 of the Inclosure Act 1845.	Regulation 6 of the Commons Registration (New Land) Regulations 1969 (S.I. 1969/1843).
38. Power to register variation of rights of common.	Regulation 29 of the Commons Registration (General) Regulations 1966 (S.I. 1966/1471)
39. Power to license persons to collect for charitable and other causes.	Section 5 of the Police, Factories etc. (Miscellaneous Provisions) Act 1916 (c. 31) and section 2 of the House to House Collections Act 1939 (c. 44).
40. Power to grant consent for the operation of a loudspeaker.	Schedule 2 to the Noise and Statutory Nuisance Act 1993 (c. 40).
41. Power to grant a street works licence.	Section 50 of the New Roads and Street Works Act 1991
42. Power to license agencies for the supply of nurses.	Section 2 of the Nurses Agencies Act 1957 (c. 16).
43. Power to issue licences for the movement of pigs.	Article 12 of the Pigs (Records, Identification and Movement) Order 1995 (S.I. 1995/11).
44. Power to license the sale of pigs.	Article 13 of the Pigs (Records, Identification and Movement) Order 1995.

<b>Function</b>	<b>Provision of Act or Statutory Instrument</b>
45.Power to license collecting centres for the movement of pigs.	Article 14 of the Pigs (Records, Identification and Movement) Order 1995.
46.Power to issue a licence to move cattle from a market.	Article 5(2) of the Cattle Identification Regulations 1998 (S.I. 1998/871).
47.Power to permit deposit of builder's skip on highway.	Section 139 of the Highways Act 1980 (c. 66).
48.Power to license planting, retention and maintenance of trees etc. in part of highway.	Section 142 of the Highways Act 1980.
49.Power to authorise erection of stiles etc. on footpaths or bridleways.	Section 147 of the Highways Act 1980.
50.Power to license works in relation to buildings etc. which obstruct the highway.	Section 169 of the Highways Act 1980.
51.Power to consent to temporary deposits or excavations in streets.	Section 171 of the Highways Act 1980.
52.Power to dispense with obligation to erect hoarding or fence.	Section 172 of the Highways Act 1980.
53.Power to restrict the placing of rails, beams etc. over highways.	Section 178 of the Highways Act 1980.
54.Power to consent to construction of cellars etc. under street.	Section 179 of the Highways Act 1980
55.Power to consent to the making of openings into cellars etc. under streets, and pavement lights and ventilators.	Section 180 of the Highways Act 1980.
56.Power to sanction use of parts of buildings for storage of celluloid.	Section 1 of the Celluloid and Cinematograph Film Act 1922



<b>Function</b>	<b>Provision of Act or Statutory Instrument</b>
57.Power to approve meat product premises.	Regulations 4 and 5 of the Meat Products (Hygiene) Regulations 1994 (S.I. 1994/3082)
58.Power to approve premises for the production of minced meat or meat preparations.	Regulation 4 of the Minced Meat and Meat Preparations (Hygiene) Regulations 1995 (S.I. 1995/3205)
59.Power to approve dairy establishments.	Regulations 6 and 7 of the Dairy Products (Hygiene) Regulations 1995 (S.I. 1995/1086)
60.Power to approve egg product establishments.	Regulation 5 of the Egg Products Regulations 1993 (S.I. 1993/1520).
61.Power to issue licences to retail butchers' shops carrying out commercial operations in relation to unwrapped raw meat and selling or supplying both raw meat and ready-to-eat foods.	Schedule 1A to the Food Safety (General Food Hygiene) Regulations 1995 (S.I. 1995/1763)
62.Power to approve fish products premises.	Regulation 24 of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998 (S.I. 1998/994).
63.Power to approve dispatch or purification centres.	Regulation 11 of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998.
64.Power to register fishing vessels on which shrimps or molluscs are cooked.	Regulation 21 of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998.
65.Power to approve factory vessels and fishery product establishments.	Regulation 24 of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998.
66.Power to register auction and wholesale markets.	Regulation 26 of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998.

<b>Function</b>	<b>Provision of Act or Statutory Instrument</b>
67.Duty to keep register of food business premises.	Regulation 5 of the Food Premises (Registration) Regulations 1991 (S.I. 1991/2828).
68.Power to register food business premises.	Regulation 9 of the Food Premises (Registration) Regulations 1991.
<b>C. Functions relating to health and safety at work</b>	
Functions under any of the "relevant statutory provisions" within the meaning of Part I (health, safety and welfare in connection with work, and control of dangerous substances) of the Health and Safety at Work etc. Act 1974, to the extent that those functions are discharged otherwise than in the authority's capacity as an employer.	Part I of the Health and Safety at Work etc. Act 1974 (c. 37).
<b>D. Functions relating to elections</b>	
1.Duty to appoint an electoral registration officer.	Section 8(2) of the Representation of the People Act 1983 (c. 2).
2.Power to assign officers in relation to requisitions of the registration officer.	Section 52(4) of the Representation of the People Act 1983.
3.Functions in relation to parishes and parish councils.	Part II of the Local Government and Rating Act 1997 and subordinate legislation under that Part.
4.Power to dissolve small parish councils.	Section 10 of the Local Government Act 1972.
5.Power to make orders for grouping parishes, dissolving groups and separating parishes from groups.	Section 11 of the Local Government Act 1972.

<b>Function</b>	<b>Provision of Act or Statutory Instrument</b>
6.Duty to appoint returning officer for local government elections.	Section 35 of the Representation of the People Act 1983.
7.Duty to provide assistance at European Parliamentary elections.	Paragraph 4(3) and (4) of Schedule 1 to the European Parliamentary Elections Act 1978
8.Duty to divide constituency into polling districts.	Section 18 of the Representation of the People Act 1983
9.Power to divide electoral divisions into polling districts at local government elections.	Section 31 of the Representation of the People Act 1983.
10.Powers in respect of holding of elections.	Section 39(4) of the Representation of the People Act 1983.
11.Power to pay expenses properly incurred by electoral registration officers.	Section 54 of the Representation of the People Act 1983.
12.Power to fill vacancies in the event of insufficient nominations.	Section 21 of the Representation of the People Act 1985.
13.Duty to declare vacancy in office in certain cases.	Section 86 of the Local Government Act 1972.
14.Duty to give public notice of a casual vacancy.	Section 87 of the Local Government Act 1972.
15.Power to make temporary appointments to parish councils.	Section 91 of the Local Government Act 1972.
16.Power to determine fees and conditions for supply of copies of, or extracts from elections documents.	Rule 48(3) of the Local Elections (Principal Areas) Rules 1986 (S.I. 1986/2214) and rule 48(3) of the Local Elections (Parishes and Communities) Rules 1986 (S.I. 1986/2215).
17.Power to submit proposals to the Secretary of State for an order under section 10 (pilot schemes for local elections in England and Wales) of the Representation of the People Act 2000.	Section 10 of the Representation of the People Act 2000

Function	Provision of Act or Statutory Instrument
<b>E. Functions relating to name and status of areas and individuals</b>	
1.Power to change the name of a county, district or London borough.	Section 74 of the Local Government Act 1972.
2.Power to change the name of a parish.	Section 75 of the Local Government Act 1972.
3.Power to confer title of honorary alderman or to admit to be an honorary freeman.	Section 249 of the Local Government Act 1972.
4.Power to petition for a charter to confer borough status.	Section 245b of the Local Government Act 1972.
<b>F. Power to make, amend, revoke or re-enact byelaws</b>	Any provision of any enactment (including a local Act), whenever passed, and section 14 of the Interpretation Act 1978
<b>G. Power to promote or oppose local or personal Bills.</b>	Section 239 of the Local Government Act 1972.
<b>H. Functions relating to pensions etc.</b>	
1.Functions relating to local government pensions, etc.	Regulations under section 7, 12 or 24 of the Superannuation Act 1972
2.Functions under the Fireman's Pension Scheme relating to pensions, etc. as respects persons employed as members of fire brigades maintained pursuant to section 4 of the Fire Services Act 1947.	Section 26 of the Fire Services Act 1947
<b>I. Miscellaneous functions</b>	
1.Power to create footpaths and bridleways.	Section 26 of the Highways Act 1980
2.Power to stop up footpaths and bridleways.	Section 118 of the Highways Act 1980.
3.Power to divert footpaths and bridleways.	Section 119 of the Highways Act 1980.

<b>Function</b>	<b>Provision of Act or Statutory Instrument</b>
4.Duty to assert and protect the rights of the public to use and enjoyment of highways.	Section 130 of the Highways Act 1980.
5.Powers relating to the removal of things so deposited on highways as to be a nuisance.	Section 149 of the Highways Act 1980.
6.Duty to keep a definitive map and statement under review.	Section 53 of the Wildlife and Countryside Act 1981
7.Duty to reclassify roads used as public paths.	Section 54 of the Wildlife and Countryside Act 1981.
8.Duty to approve authority's statement of accounts, income and expenditure and balance sheet or record of receipts and payments (as the case may be).	The Accounts and Audit Regulations 1996 (S.I. 1996/590).
9.Functions relating to sea fisheries.	Sections 1, 2, 10 and 19 of the Sea Fisheries Regulation Act 1966 (c. 38).
10.Powers relating to the preservation of trees.	Sections 197 to 214D of the Town and Country Planning Act 1990 and the Trees Regulations 1999 (S.I. 1999/1892).
11.Powers relating to the protection of important hedgerows.	The Hedgerows Regulations 1997 (S.I. 1997/1160).
12.Power to make limestone pavement order.	Section 34(2) of the Wildlife and Countryside Act 1981 (c. 69).
13.Power to make standing orders.	Section 106 of, and paragraph 42 of Schedule 12 to, the Local Government Act 1972
14.Power to appoint staff.	Section 112 of the Local Government Act 1972.
15.Power to make standing orders as to contracts.	Section 135 of the Local Government Act 1972.
16.Power to make payments or provide other benefits in cases of maladministration etc.	Section 92 of the Local Government Act 2000.

**TABLE 2****FUNCTIONS NOT TO BE THE SOLE RESPONSIBILITY OF THE EXECUTIVE**

The Executive is responsible for formulating or preparing the plans listed below and then submitting them to Full Council for consideration and adoption or approval.

<b>Plans and strategies</b>	<b>Reference</b>
Annual Library Plan <sup>1</sup>	Section 1(2) of the Public Libraries and Museums Act 1964
Best Value Performance Plan	Section 6(1) of the Local Government Act 1999
Children and Young People's Plan <sup>1</sup>	Paragraph 1A of Schedule 2 to the Children Act 1989
Crime and Disorder Reduction Strategy	Sections 5 and 6 of the Crime and Disorder Act 1998
Development Plan Documents <sup>2</sup>	Section 15 of the Planning and Compulsory Purchase Act 2004.
Licensing Authority Policy Statement	Section 349 of the Gambling Act 2005
Local Transport Plan	Section 108(3) of the Transport Act 2000
Plans and alterations which together comprise the Development Plan	Section 54 of the Town & Country Planning Act 1990
Sustainable Community Strategy <sup>3</sup>	Section 4 of the Local Government Act 2000
Youth Justice Plan <sup>1</sup>	Section 40 of the Crime and Disorder Act 1998

<sup>1</sup> Not the responsibility of the District Council

<sup>2</sup> Functions relating to local development documents which are not development plan documents are the responsibility of the Executive

<sup>3</sup> Local Strategic Partnership

**TABLE 3****LOCAL CHOICE FUNCTIONS**

Functions that may be exercised by either the Council or the Executive

<b>Function</b>	<b>Decision Making Body</b>	<b>Delegation of Functions</b>
The determination of an appeal against any decision made by or on behalf of the Council	Council	Appeals Committee
Any function relating to contaminated land	Council	Executive
The discharge of any function relating to the control of pollution or the management of air quality	Council	Executive
The service of an abatement notice in respect of a statutory nuisance	Council	Executive
The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the authority's area	Executive	
The inspection of the authority's area to detect any statutory nuisance	Council	Executive
The investigation of any complaint as to the existence of a statutory nuisance	Council	Executive

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<b>Function</b>	<b>Decision Making Body</b>	<b>Delegation of Functions</b>
The obtaining of information under Section 330 of the Town and Country Planning Act 1990 as to interests in land	Executive	Assistant Director, Planning & Regeneration Services and/or Assistant Director, Legal Services
The obtaining of particulars of persons interested in land under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976	Executive	Assistant Director, Legal Services
<p>The appointment of any individual:-</p> <ul style="list-style-type: none"> <li>- To any office other than an office in which he is employed by the Authority.</li> <li>- To anybody other than:- <ul style="list-style-type: none"> <li>(i) A joint Committee of two or more authorities; or</li> <li>(ii) To any Committee or Sub-Committee of such a body and the revocation of any such appointment.</li> </ul> </li> </ul>	Executive	Managing Director
Making agreements with other local authorities for the placing of staff at the disposal of those other authorities.	Executive	Managing Director



### 3. Functions (Council) delegated to Committees

COMMITTEE	MEMBERSHIP	FUNCTION
<b>Regulatory, Probity and Other Committees</b>		
Development Committee	13 Members of the Authority	Those functions in relation to town and country planning and development control as specified in this Part and Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended)
Appeals Committee	6 Members of the Authority	Those functions in relation to appeals, licensing and registration as specified in this part and Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) other than those that fall within the remit of the Licensing Committee.
Licensing Committee	15 Members of the Authority	Those functions under the Licensing Act 2003, the Gambling Act 2005 and all associated or amending legislation as specified in this part and Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended)
Audit Committee	11 Members of the Authority	Those functions in relation to: - <ul style="list-style-type: none"> <li>• matters arising out of internal audit and control reports,</li> <li>• the scope of internal audit activity,</li> <li>• review of the adequacy of governance and risk management arrangements and internal control, and</li> <li>• consideration of matters arising from external audit as are referred to it by the External Auditor.</li> <li>• scrutiny of the treasury management strategy and policies.</li> </ul>
Standards Committee	8 Members of the Authority 3 Parish Council co-opted, non-voting Members	All matters set out in paragraph 9.04 of Article 9 of this Constitution
Investment Board	13 Members of the Authority	Those functions in relation to: - <ul style="list-style-type: none"> <li>• ensuring best use is made of sites and property.</li> <li>• monitoring the co-ordinated delivery of major schemes and projects to support property development and community facilities within the District.</li> </ul>

		<ul style="list-style-type: none"> <li>shaping, challenging and reviewing business cases in relation to transformation and service development that require new investment in excess of £25,000.</li> </ul>
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Onward Delegations	Responsible Officers	Functions
<p>Any decision which an officer takes under delegated powers must:-</p> <p>a) Implement a policy or decision previously approved or taken by the Executive or a Committee;</p> <p>b) Facilitate or be conducive or incidental to the implementation of a policy or decision previously taken by the Executive or a Committee;</p> <p>This delegation does not include the authority to confirm any order or issue any permission, consent, licence or similar determination that is the subject of a statutory right of appeal that has been duly exercised or a substantive objection that has been raised.</p>	<p>Managing Director</p> <p>Strategic Director</p> <p>Assistant Director, Legal Services</p> <p>Section 151 Officer</p> <p>Assistant Director, Planning &amp; Regeneration Services</p> <p>Assistant Director, Environmental Services</p> <p>Assistant Director, Community and Housing Services</p> <p>Assistant Director, Commercial Services</p> <p>Assistant Director, Democratic Services</p> <p>Assistant Director, Customer, Revenues &amp; Benefits Services</p>	<p>To do all things necessary for the proper management and administration of the Council's services and functions as set out in and subject to the Scheme of Delegation to Officers contained within Part C of this Part of the Constitution and approved annually by Full Council</p>

**PART B**

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**EXECUTIVE FUNCTIONS**

The functions identified as being the responsibility of the Executive shall be carried out by the Executive in accordance with the Leader's scheme of delegation set out in this part.

**1. Executive Functions**

- 1.1 To make recommendations to the Council in relation to the functions contained in Part A of this document.
- 1.2 Subject to those matters reserved to the Council in Part A of this document, the Review Committee functions and with the exception of those Council (non-Executive) powers specifically delegated to other forums set out in Parts A and C of this document, the Executive has full power to act in respect of every other function.
- 1.3 To refer at its discretion, any issue to the Review Committee for detailed consideration and report.
- 1.4 To consider the recommendations of the Review Committee either arising from an issue referred to it under 3 above, or where the latter Committee has "called-in" a decision of the Executive for review

**2. Executive Functions Delegated to an Individual Member**

- 2.1 This Scheme of Delegation is made pursuant to the Local Government Act 2000 Section 15(4) and takes effect on and from 14 May 2008
- 2.2 Pursuant to S.15(4) Local Government Act 2000 The Leader of the Council may discharge any functions and exercise any powers which are the responsibility of the Executive, (and which have not previously been allocated pursuant S.15 (2) Local Government Act 2000); alternatively the Leader may arrange for the discharge of any of those functions by any of the following:-
  - (a) the Executive
  - (b) a Committee of the Executive
  - (c) an individual Member of the Executive
  - (d) an Officer of the Council
- 2.3 The Leader has exercised his/her power of delegation in the manner set out in Schedules 1 and 2 below.
- 2.4 The Leader may amend the scheme of delegations at any time by giving notice in writing to any person to whom the power is now to be delegated and to the Monitoring Officer setting out the change to be made; such amendment to take effect immediately on confirmation of

receipt by the Monitoring Officer or in their absence the Deputy Monitoring Officer

- 2.5 The Leader may exercise the functions allocated to any Executive Member under this Scheme in the absence of that Member.
- 2.6 Where the Council, the Leader, the Executive or a Committee of the Executive or a member of the Executive gives authority for the doing of any thing the person or persons designated shall be entitled to take all necessary steps for the doing of such thing including the appointment of an Advisory Group of persons (including officers and persons who are not Members of the Council) to assist him or her or them in his or her or their work.
- 2.7 In the absence of the Leader the person or persons designated by the Leader and notified by the Leader to the Managing Director as having responsibility for the Leader's area's of responsibility is or are authorised to exercise the functions of the Leader pursuant to the Constitution, Council Procedure Rules, Financial Procedure Rules and this Scheme of Delegation.

### **3. General Principles**

- 3.1 Where decisions are taken under delegated powers the following principles and conditions shall apply:-
- (a) Powers shall be exercised in accordance with the Council Procedure Rules, Financial Procedure Rules and Contract Procedure Rules of the Council
  - (b) The person or persons exercising such power shall give effect to any resolution of the Council upon any matter of principle or policy in relation to the functions concerned
  - (c) The person or persons dealing with a matter shall arrange any appropriate consultation including that with the Leader, other Members of the Executive, Officers and others that shall be required.
  - (d) In any case where the person or persons exercising the power considers that a new departure in policy is likely to be involved, or if the implications are such that the person considers, after consulting the Managing Director, that such course is necessary, the matter shall be referred to the Executive for consideration before reference to the Council.
  - (e) Key decisions taken shall be in accordance with the rules on access to information in Part 4 ('The Access to Information Procedure Rules') as they apply to the Executive.

- (f) Any person or persons to whom a matter has been allocated or delegated may decide to seek the authority of the Leader or Executive rather than to exercise delegated authority in any matter.
- (g) The exercise of delegated authority shall be subject to there being appropriate and adequate budgetary provision. Where a Member of the Executive requests another person to exercise powers delegated to him or her, the person instructing shall ensure that appropriate and adequate budgetary provision has been made.
- (h) The exercise of delegated authority relating to a key decision shall be documented in the prescribed form.
- (i) Any decision which could attract to the Council legal liability shall be taken in consultation with the Monitoring Officer.
- (j) Any decision that has significant financial implications shall be taken in consultation with the S.151 Officer.
- (k) Any decision that could involve the exercise by the Council's Monitoring Officer of any of his or her powers shall be taken in consultation with him or her or in his or her absence the nominated Deputy Monitoring Officer.
- (m) The Leader and each Executive Member shall in exercising his or her functions have regard to the Council's duty to secure continuous improvement in the delivery of its services and in particular to improve performance as measured by nationally and locally set performance indicators which affect the functions delegated to him or her.
- (n) The Leader and each Executive Member shall in exercising functions delegated under the Scheme of Delegation have regard to all relevant considerations and shall not take into account irrelevant matters.

#### **4. PORTFOLIOS AND POWERS DELEGATED TO INDIVIDUAL MEMBERS OF THE EXECUTIVE**

- 4.1 The following table sets out the portfolios of and powers delegated by the Leader to individual Executive Members and to the Executive itself pursuant to S15(4) Local Govt. Act 2000.
- 4.2 An Executive Member may exercise Executive functions in respect of all matters within his/her portfolio except:-
  - Key Decisions where the matter has been specifically referred to or reserved to the Executive
  - land transactions having a value or an aggregate value in excess of £50,000

- contracts or other non-land related matters having a value or an aggregate value in excess of £30,000
- matters in which he/she has a declarable interest
- matters where his/her involvement would be contrary to any decision making protocol or other guidance approved by the Executive

4.3 Functions involving decisions falling within any of the above criteria are hereby delegated to the Executive acting collectively.

4.4 For the avoidance of doubt where responsibility for a function is delegated under this scheme the individual(s) to whom it is delegated is/are empowered to:-

- (a) take any step in the course of or otherwise for the purposes of or in connection with, the discharge of the function,
- (b) do anything incidental or conducive to the discharge of that function, or
- (c) do anything expedient in connection with the discharge of the function or any action falling within paragraph a) or b).

Individual Member of Executive	Function	Limits and Qualification
Leader of Council (or Deputy in his/her absence) <a href="#">Cllr T G Cutmore</a>	Taking a special urgency decision in accordance with the Access to Information Procedure Rules	Agreement of Chairman of Review Committee required (or, in his/her absence, the Chairman of Council or in his/her absence, the Vice-Chairman of the Council).
	Taking an urgent decision contrary to the Policy Framework or Budget in accordance with the Budget and Policy Framework Procedure Rules	Only if not practicable to convene a quorate meeting of Full Council and written consent is received from the Chairman of the Review Committee that the decision may be regarded as urgent (in the absence of the Review Committee Chairman, the Chairman of the Council (or in his/her absence, the Vice-Chairman of the Council) should be consulted).

	Overall strategy and policy direction including corporate policy development, national / regional issues, community leadership, partnership and joint working development, elections, Local Enterprise Partnership, Local Strategic Partnership and all residual functions of the Executive.	To take all steps necessary to procure the effective and efficient provision of services within the ambit of the portfolio.
Deputy Leader <a href="#">Cllr M J Steptoe</a>	Strategic direction, strategic partnerships (including Town and Parish Councils), South Essex Parking Partnership, Essex Partnership for Flood Management, flood forum, civics and performance management.	To take all steps necessary to procure the effective and efficient provision of services within the ambit of the portfolio
Executive Member for Finance <a href="#">Cllr S P Smith</a>	Financial resources, audit, procurement, risk management, payroll, creditors and debtors.	To take all steps necessary to procure the effective and efficient provision of services within the ambit of the portfolio
Executive Member for Enterprise <a href="#">Cllr G J Ioannou</a>	Asset management, economic development, employment, town teams, district car parks, commercial activities and tourism, ICT and Communications.	To take all steps necessary to procure the effective and efficient provision of services within the ambit of the portfolio
Executive Member for Planning <a href="#">Cllr I H Ward</a>	Planning policy, development control, planning enforcement and building control.	To take all steps necessary to procure the effective and efficient provision of services within the ambit of the portfolio

Executive Member for Environment <a href="#">Cllr D J Sperring</a>	Recycling, open spaces, waste management, street scene, pollution control, emergency planning, coastal protection, TPO service, hedgerows and cemetery services.	To take all steps necessary to procure the effective and efficient provision of services within the ambit of the portfolio
Executive Member for Community <a href="#">Cllr M J Webb</a>	Young people, safeguarding, community safety, public health, housing need, grants and voluntary sector support, leisure centres, arts, culture and heritage.	To take all steps necessary to procure the effective and efficient provision of services within the ambit of the portfolio
Executive Member for Governance <a href="#">Cllr Mrs C E Ree</a>	Legal Services, Revenues and Benefits, licensing, land charges, Regulation of Investigatory Powers Act, fraud, data protection, Customer Services, Human Resources and Member support.	To take all steps necessary to procure the effective and efficient provision of services within the ambit of the portfolio



## **PART C**

### **SCHEME OF DELEGATIONS TO OFFICERS OF COUNCIL AND EXECUTIVE FUNCTIONS**

#### **1 General Principles**

- 1.1 This scheme delegates the powers and duties of the Council to officers within broad functional descriptions based on the management structure set out in Part 7 of the Constitution and includes powers and duties under all legislation present and future within those descriptions and all powers and duties incidental to that legislation including authorising the affixing of the Common Seal.
- 1.2 This scheme operates under the provisions of the Local Government Act 1972 and all other powers enabling the Council.
- 1.3 In each case the delegated authority includes management of the human and material resources made available for the functions and services within the limitations of this scheme and subject to specific delegations in this scheme or elsewhere to another officer.
- 1.4 In this scheme "Officer" means the holder of any post named in this scheme as having delegated powers and duties.

#### **2 Limitations on the Exercise of Delegated Powers**

##### **2.1 General Limitations**

This scheme does not delegate to officers:-

- (a) any matter reserved to Full Council or;
- (b) any matter which by law may not be delegated to an officer;
- (c) any matter expressly reserved to the Executive or a Committee within this Constitution or withdrawn from delegation by this scheme or by the Executive, a Committee or the Council;
- (d) authority to determine policy and budgets.

##### **2.2 Council Policy**

Any exercise of delegated powers shall be subject to policies approved by the Council from time to time including Employment Policies and Disciplinary Policies, relevant Codes of Conduct and the Corporate Policy Framework.

##### **2.3 Budget**

In exercising delegated powers, Officers shall not go beyond the provision in the revenue or capital budgets except as permitted by Financial Regulation and Procurement Policy.

## 2.4 Scrutiny and Call-in

In exercising delegated powers, officers shall advise the Chairman of the Executive and the affected Ward Member/s of any decision to be taken that is:-

- (1) outside the ordinary duties of the service and
- (2) has a significant effect on one or more Wards in the District in terms of service or quality of life in the area.

Any proposal to take a decision in these circumstances may be called in, subject to the provisions for urgent action, by the Chairman of the Executive who will normally acquiesce to such a request from Ward Members. The matter will then be put to the Executive for decision at its next meeting.

## 3 Onward Delegation

- 3.1 This scheme includes the power for officers to delegate in writing all or any of their delegated functions to other officers (described by name of post) either fully or under the general supervision and control of the delegating Officer.

Sub-delegations will be publicly available documents and may be reviewed by the Executive or scrutinised by the Review Committee at any time.

Any officer exercising powers or duties in pursuance of full sub-delegation will be politically restricted under Section 2(1)(g) of the Local Government and Housing Act 1989.

### 3.2 To the Managing Director

To be Head of Paid Service and determine and issue general guidelines to officers with regard to recruitment, training, conditions of service, national and local pay awards, rewards, health and safety, employment relations, discipline and dismissals.

To be the responsible officer for and take decisions and exercise discretion on the management of Human Resources and matters of Corporate Policy, Health and Safety, Emergency Planning and Staffing issues.

To be Emergency Controller for the District of Rochford and with the agreement of the Leader of the Council and appropriate Executive Members and Chief Officers (or in their absence deputy) to take any action that cannot reasonably be delayed until the next available Council, Executive, Committee or Sub-Committee meeting, subject to a report on such action being made to the next practicable meeting of the appropriate body.

### **3.3 To the Strategic Director**

To be Returning Officer for District and Parish Council Elections in the District of Rochford, retaining the right to appoint others to discharge any or all of the functions of Returning Officer.

To be Electoral Registration Officer for the Council with authority to bring proceedings and to defend actions under the Representation of the People Act 1983 and any associated regulations.

To deputise for the Managing Director and be the Responsible Officer and take decisions and exercise discretion on all corporate management issues affecting the Council.

### **3.4 To the Assistant Director, Legal Services**

To be Monitoring Officer pursuant to Section 5 of the Local Government and Housing Act 1989, as amended by Schedule 5 paragraph 24 of the Local Government Act 2000 and to grant dispensations under Section 33 of the Localism Act 2011.

To be Proper Officer for all statutory purposes and Standing Orders except where a specific appointment has been delegated to another officer.

To be the Solicitor to the Council.

To deputise for the Managing Director and/or the Strategic Director and be the Responsible Officer for and take decisions and exercise discretion on matters within Legal Services.

To authorise the institution, defence, withdrawal or compromise of any claims or legal proceedings, civil or criminal, including the making of appeals.

To give necessary legal authorisation to officers of the Council, including authorisation to appear before the Magistrates' Courts, to serve notices to ascertain interests in land and to enter upon land in connection with the discharge of any of the functions of the Council.

To authenticate documents on behalf of the Council.

[To be the Data protection officer for the Council.](#)

### **3.5 To the Section 151 Officer**

To exercise the proper administration of the Council's financial affairs under Section 151 of the Local Government Act 1972 and Section 114 of the Local Government and Finance Act 1988.

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To be the Proper Officer under Section 115 of the Local Government Act 1972.

To have responsibility for accounting records and control systems, the form of the Statement of Accounts, its preparation, audit and inspection in accordance with the provisions of the Accounts and Audit Regulations 2003.

To update financial limits within the Financial Procedures Rules from time to time broadly in line with inflations.

To have responsibility for the execution and administration of treasury management decisions.

To deputise for the Managing Director and/or the Strategic Director and be the Responsible Officer for and take decisions and exercise discretion on matters within Resource Services.

To determine the Council Tax base figure each year.

**3.6 To the Assistant Director, Commercial Services**

To deputise for the Managing Director and/or the Strategic Director and be the Responsible Officer for and take decisions and exercise discretion on matters within Commercial Services.

**3.7 To the Assistant Director, Community and Housing Services**

To deputise for the Managing Director and/or the Strategic Director and be the Responsible Officer for and take decisions and exercise discretion on matters within Community and Housing Services.

**3.8 To the Assistant Director, Customer, Revenues and Benefits Services**

To deputise for the Managing Director and/or the Strategic Director and be the Responsible Officer for and take decisions and exercise discretion on matters within Customer, Revenues and Benefits Services.

**3.9 To the Assistant Director, Democratic Services**

To deputise for the Managing Director and/or the Strategic Director and be the Responsible Officer for and take decisions and exercise discretion on matters within Democratic Services.

**3.10 To the Assistant Director, Environmental Services**

To deputise for the Managing Director and/or the Strategic Director and be the Responsible Officer for and take decisions and exercise discretion on matters within Environmental Services.

### 3.11 To the Assistant Director, Planning & Regeneration Services

To deputise for the Managing Director and/or the Strategic Director and be the Responsible Officer for and take decisions and exercise discretion on matters within Planning Services except for the determination of planning applications when the following categories only will be determined under delegation:-

- i. Applications determined in accordance with the Weekly List procedure.
- ii. Private garages within the curtilage of established residential properties.
- iii. New or altered means of access to existing developments subject to the necessary consultations with the Highway Authority.
- iv. Shop fronts relating only to shopping uses outside and not affecting designated Conservation Areas.
- v. Fences, boundary walls and other means of enclosure to residential properties.
- vi. The approval of reserved matters relating to landscaping and external materials.
- vii. Minor amendments to approved plans not determined by the Development Committee.
- viii. The temporary siting of caravans where an approved building is in the course of construction.
- ix. All extensions to residential buildings.
- x. Refusal because of Metropolitan Green Belt policy.
- xi. Changes of use in accordance with an appropriate formal planning policy or plan.
- xii. Applications for changes of use of land to private residential gardens.
- xiii. Advertisements outside Conservation Areas and/or which do not affect the character or setting of Listed Buildings.
- xiv. Listed Building Consent where a concurrent planning application is within the existing delegation scheme.
- xv. Listed Building Consents where the building work involved does not require planning permission.
- xvi. Applications under the prior notification procedures in Part 6 (agricultural development), Part 7 (forestry development) and Part 24 (telecommunications development) of Schedule 2 to the Town & Country Planning (General Permitted Development) Order 1995.
- xvii. Applications under the prior notification procedures in Part 31 (Demolition of Buildings) of Schedule 2 to the Town & Country Planning (General Permitted Development) Order 1995.
- xviii. Response to consultations on County Matter applications in consultation with the Chairman of the Development Committee and the Ward Members.
- xix. Response to consultations on Deemed County Council consent applications.
- xx.

xxi. Response to consultations from neighbouring authorities unless the proposed development would have a major environmental impact on the District.

Exceptionally, where a delegated application raises controversial issues or significant community concern, the Assistant Director, Planning & Regeneration Services shall advise the Chairman of the Development Committee, the Portfolio Holder for Planning and the Chairman of the Council, who may require that the application be reported to that Committee for determination.