

# DEMOCRACY AND GENERAL PURPOSES COMMITTEE MEETING

Date: Wednesday 13 November 2019  
Time: 6.30 pm  
Venue: Town Hall, High Street, Maidstone

Membership:

Councillors Mrs Blackmore, Chappell-Tay, Mrs Gooch (Chairman), Hastie, Joy, Lewins, Perry, Purle and Webb (Vice-Chairman)

*The Chairman will assume that all Members will read the reports before attending the meeting. Officers are asked to assume the same when introducing reports.*

---

## AMENDED AGENDA

Page No.

1. Apologies for Absence
2. Notification of Substitute Members
3. Urgent Items
4. Notification of Visiting Members
5. Disclosures by Members and Officers
6. Disclosures of Lobbying
7. To consider whether any items should be taken in private because of the possible disclosure of exempt information.
8. Minutes of the Meeting Held on 4 September 2019
9. Presentation of Petitions (if any)
10. Question and Answer Session for Members of the Public
11. Committee Work Programme
12. Presentation - New Look Constitution
13. Reference from the Audit, Governance and Standards Committee - Actions Arising from the Investigation into the Release of Exempt Information Contrary to Part 1 of Schedule 12A to the Local Government Act 1972
14. **Reference from Council - Motion - Access to Information** **43 - 71**

---

**Issued on Tuesday 5 November 2019**

**Continued Over/:**

*Alison Broom*

**Alison Broom, Chief Executive**

15. Whole Council Elections - Consultation Stage Approval

16. Committee Structure Review - 6 Month Update

**PUBLIC SPEAKING AND ALTERNATIVE FORMATS**

If you require this information in an alternative format please contact us, call **01622 602899** or email [committee@maidstone.gov.uk](mailto:committee@maidstone.gov.uk).

To find out more about the work of the Committee, please visit [www.maidstone.gov.uk](http://www.maidstone.gov.uk).

**IN THE MATTER OF COUNCILLOR ACCESS TO  
CONFIDENTIAL/ EXEMPT INFORMATION  
Local Government Act 1972, section 100A and 100I**

---

**INSTRUCTIONS TO ADVISE**

---

Counsel is sent herewith the following copy documents:

1. Full Council Agenda dated 25 September 2019. Item 23 – Notice of Motion.
2. Part 3(17) of the Council's Constitution setting out the process for Motions on Notice.
3. Briefing Note for Council meeting – 25 September 2019 – Motion on Access to Information.
4. Guidance Note on Confidential and Exempt Information - 8 January 2019.
5. Council Procedure Rules 3.3 to 12 – Access to Information Procedure Rules and Additional Rights of Access for Councillors.
6. Extract Minutes – Council Meeting - Motion relating to agenda item 23.
7. The following link to a webcast of the Full Council meeting. Debate on motion commences at 1:21:30  
[https://www.youtube.com/watch?v=L0ZTV\\_hmGYs](https://www.youtube.com/watch?v=L0ZTV_hmGYs)

1. Leading Counsel is instructed by Patricia Narebor, Head of Legal Partnership, Mid Kent Legal Services, for Maidstone, Swale and Tunbridge Wells Borough Councils on behalf of Maidstone Borough Council for the purpose of this instruction.

2. At a meeting of the Maidstone Full Council on 25 September 2019, a Member (Cllr Perry, following amendments) gave notice of the following motion:

“Members of this Council are elected by the Residents of this Borough to represent their interests. In order for Members to carry out their duties effectively this Council agrees that all committee agendas and reports relating to items on the agenda (including minutes, supporting documentation, and urgent updates and relevant exempt information) will be provided to committee members and made available to any other interested members on request.” (Document 1).

3. Leading Counsel is referred to the Briefing Note for the Council meeting which provided guidance to all Councillors regarding the Local Government (Access to Information) Act 1985 and related statutory provisions. (Document 3).

4. Guidance had been provided to Councillors in the past following the release of exempt information to the press. Leading Counsel is referred to Document 4 - the Guidance Note on Confidential and Exempt Information dated 8 January 2019.

5. Full Council resolved that the amended motion be considered by Democracy and General Purposes Committee (“DGP Committee”). The terms of reference for the DGP Committee enables it to “review the Constitution in conjunction with the Monitoring Officer and recommend proposed changes, where significant, to the Council”.

6. Cllr Perry expressed that whilst the common law case of ‘**R v Birmingham City Council ex p O** (1983)’ had been cited in support of the “need to know” approach currently adopted by the Council, there are other examples of common law in existence which support the motion.

7. Another member then proceeded to advise that various case law in support of the motion exists whilst confirming his understanding that case law is open to interpretation. The following case was cited:

- ‘**R v Sheffield City Council Ex parte Chadwick** (1985) in which the Divisional Court (Woolf J) took the view that it is not lawful for a council, by allowing a sub-committee to be used for party political purposes, to justify a need for confidentiality and secrecy which would not otherwise arise.

8. The Councillor then went on to advise that Lord Brightman had, in the case of a Councillor with a reasonable request for information stated that bias should be to allow release of information rather than conceal and that Lord Granger extended this by stating that a Council's refusal of information was almost "Wednesbury unreasonable". No cases were cited however.

9. Amendments to the motion were proposed by both Cllr Clarke and Cllr Blackmore and there was general support for Councillors having access to any information they requested and Officers not having any powers to prevent that.

10. Leading Counsel is referred to the Access to Information Procedure Rules within the Council's Constitution – Document 5 and in particular procedure rule 3.2. to 3.12. The Council's current practice is that Committee papers, appendices, background papers and exempt papers are provided to Committee members to enable decisions to be made. All papers are published electronically and available to the public and non committee members (except exempt information) in accordance with the Local Government (Access to Information) Act 1985 and CPR 5. The Council operates a Committee system of governance under the Local Authorities (Committee System) (England) Regulations 2012 rather than an executive model of governance.

11. All Councillors are entitled to inspect any document which is in the possession or under the control of the Council where they are able to demonstrate a "need to know" to the satisfaction of the Monitoring Officer or her Deputy. Leading Counsel is referred to CPR 12. The implication of the motion is that Council Procedure Rules will require revision if all Councillors are to be provided with all information to include exempt information without demonstrating a "need to know".

12. Leading Counsel is referred to caselaw addressing the issue of Members' access to information and meetings, namely:

***R v Birmingham City Council ex p O*** (1983 1 AC 578 – members had a right of access to all written material in the possession of the local authority if they could demonstrate a "need to know" to enable them to properly perform their duties.

***R v Hinckley and Bosworth BC ex p Handford*** (1992) *unreported*: A members statutory right of access is limited to documents concerned with business about to be transacted at a meeting. For access to other documents, Members must rely on their common law rights if they can demonstrate a need to know, or on the rights available to the public, including through the FOI Act 2000.

***R v Rushmoor BC ex p Crawford*** (1981) *The Times* 28 November: There is no automatic right to membership of a committee.

***R v Brent BC ex p Gladbaum*** (1989) *The Times* 14 December: Members of the committee should be appointed by full Council and this task and the power to remove members from committees should not be delegated to a committee. ***R v Eden DC ex Moffat*** (1988) *The Times* 24 November – removal from a committee must be fair. The case of Eden also demonstrated that each case had to be

taken on its merits with the advantages of the member attending being weighed against the interests of the Council and any disadvantages.

**R v Sheffield City Council ex p Chadwick** (1985) 84 LGR 563: If a Councillor can establish a “need to know”, then he or she will be entitled to attend meetings in the same way that a councillor will have access to papers.

13. The Local Government Act 1972, section 100A (4) provides that:

“A principal council may by resolution exclude the public from a meeting during an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during that item there would be disclosure to them of exempt information, as defined in Part 1 of Schedule 12A of the Local Government Act 1972 – Section 100I. Leading Counsel is referred to the categories of exempt information as outlined in paragraph 11 of the Guidance Note dated 8 January 2019.

14. Leading Counsel is requested to advise on the implications should the Council procedure rules be revised in line with the motion. Further, how the Council can avoid compromising its position in relation to release of information if the public interest in maintaining the exemption outweighs the public interest in disclosing the information:

- relating to an individual or likely to reveal the identity of an individual,
- how to protect information relating to the financial or business affairs of any particular person (including the Council’s information);
- information relating to labour relations arising from consultations or negotiations;
- Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings;
- Information that reveals that a notice, order or direction under any legislation is proposed to be imposed on a person;
- Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

15. This is particularly so if Councillors are no longer required to demonstrate “a need to know” and all information is to be made available to all Councillors. As noted earlier, the Council undertook an investigation following release of exempt information to the Press which had been considered by members at a Committee. The Council was not able to identify whether the source of the leak to the Press was by a member or an officer of the Council.

16. Leading Counsel or an appointed Senior Junior Counsel may be required to attend the Democracy and General Purposes Committee on 13 November 2019 to provide clarification to the Committee and guidance on the implications should the proposal in the motion be accepted and the Council Procedure rules be revised.

Leading Counsel is requested to advise on:

- i) the general legal position currently accepted on access to information by Councillors and when and how this is limited.
- ii) whether it would be feasible for Councillors to be granted full access to information as proposed.
- lii consider whether limitations on any such access would be advisable and why.
- iv) consider available case law and provide an opinion on whether there is support for the Council's current approach as outlined in the Council's Access to Information Procedure Rules and Additional Rights of Access for Councillors under procedure rule 12 or the approach proposed by the Notice of Motion.
- v) advise generally.

Should Leading Counsel require further information, please contact Gary Rowland on 01622 602276 and at [Gary.Rowland@midkent.gov.uk](mailto:Gary.Rowland@midkent.gov.uk).

**IN THE MATTER OF**

**COUNCILLOR ACCESS TO  
CONFIDENTIAL/ EXEMPT  
INFORMATION**

---

**INSTRUCTIONS TO ADVISE**

---

Timothy Straker QC  
4-5 Gray's Inn Square  
Gray's Inn  
London  
WC1R 5AH

020 7404 5252

Patricia Narebor  
Head of Legal Partnership  
Mid Kent Legal Services  
DX: 4819 Maidstone  
Tel: 01622 602182

Patricia.Narebor@midkent.gov.uk

Copy to – [gary.rowland@midkent.gov.uk](mailto:gary.rowland@midkent.gov.uk)

Ref: PN/M013511



**You are hereby summoned to attend a meeting of the**

**MAIDSTONE BOROUGH COUNCIL**

Date: Wednesday 25 September 2019  
Time: 6.30 p.m.  
Venue: Town Hall, High Street, Maidstone

**Membership:**

Councillors Adkinson, Bartlett, Mrs Blackmore, Brice, Brindle, D Burton, M Burton, Chappell-Tay, Clark, Cox, Cuming, Daley, English, Eves, Fermor, Fissenden, Fort, Garland, Garten, Mrs Gooch, Mrs Grigg, Harper, Harvey, Harwood, Hastie, Hinder, Mrs Hinder, Joy, Khadka, Kimmance, Lewins, McKay, McLoughlin, Mortimer, Munford, Naghi, Newton, Parfitt-Reid, Perry, Powell, Purle, Mrs Ring (Mayor), Mrs Robertson, D Rose, M Rose, Round, J Sams, T Sams, Spooner, Springett, Vizzard, Webb, de Wiggondene-Sheppard, Wilby and Young

---

**AGENDA**

Page No.

1. Prayers
2. Apologies for Absence
3. Dispensations (if any)
4. Disclosures by Members and Officers
5. Disclosures of Lobbying
6. To consider whether any items should be taken in private because of the possible disclosure of exempt information.
7. Minutes of the meeting of the Borough Council held on 17 July 2019 1 - 7
8. Minutes of the extraordinary meeting of the Borough Council held on 17 July 2019 8 - 10
9. Mayor's Announcements
10. Presentation of a Certificate to Mrs Fran Wilson Confirming her Appointment as an Honorary Alderman of Maidstone Borough Council

---

**Issued on Tuesday 17 September 2019**

**Continued Over/:**

*Alison Broom*

**Alison Broom, Chief Executive**

11. Petitions
12. Question and Answer Session for Members of the Public
13. Questions from Members of the Council to the Chairmen of Committees
14. Current Issues - Report of the Leader of the Council, Response of the Group Leaders and Questions from Council Members
15. Joint Report of the Policy and Resources Committee held on 23 July 2019 and the Audit, Governance and Standards Committee held on 30 July 2019 - Updated Capital Strategy 11 - 32
16. Report of the Audit, Governance and Standards Committee held on 30 July 2019 - Audit, Governance and Standards Committee - Annual Report to Council 2018/19 33 - 43
17. Report of the Democracy and General Purposes Committee held on 4 September 2019 - Amendments to the Constitution - Outside Bodies 44 - 68
18. Report of the Strategic Planning and Infrastructure Committee held on 10 September 2019 - Loose Neighbourhood Plan 69 - 145
19. Oral Report of the Communities, Housing and Environment Committee to be held on 17 September 2019 (if any)
20. Oral Report of the Policy and Resources Committee to be held on 18 September 2019 (if any)
21. Oral Report of the Licensing Committee to be held on 19 September 2019 (if any)
22. Oral Report of the Communities, Housing and Environment Committee Acting as the Crime and Disorder Committee to be held on 24 September 2019 (if any)
23. Notice of Motion - Access to Information  
 Notice of the following motion has been given by Councillor Perry:  
  
*Members of this Council are elected by the Residents of this Borough to represent their interests. And in order for Members to carry out their duties effectively the Council agrees that all committee agendas, reports and information relating to items on the agenda (Minutes etc.) should be made available to all Members; including information made exempt from publication under Paragraph 3 of Part I of Schedule 12A to the Local Government Act 1972.*
24. Re-appointment of Councillor Peter Coulling of Teston Parish Council as a Non-Voting Parish Council Representative on the Audit, Governance and Standards Committee, No Other Nominations having been Received

## **PUBLIC SPEAKING AND ALTERNATIVE FORMATS**

If you require this information in an alternative format please contact us, call **01622 602899** or email [committee@maidstone.gov.uk](mailto:committee@maidstone.gov.uk).

In order to speak at this meeting, please contact Democratic Services using the contact details above, by 5 p.m. one clear working day before the meeting (i.e. 23 September 2019). If asking a question, you will need to provide the full text in writing. If making a statement, you will need to tell us which agenda item you wish to speak on. Please note that slots will be allocated on a first come, first served basis.

To find out more about the work of the Council, please visit [www.maidstone.gov.uk](http://www.maidstone.gov.uk).

specific form of reply or replies. S/he may decline to give a full or any reply if in his/her opinion to do so would involve an unreasonable amount of labour or cost.

(g) The question and answer session will be limited to half an hour.

## **15 PUBLIC SPEAKING AT COUNCIL AND COMMITTEES**

**15.1** Where the meeting is open to the public, a member of the public or a representative of an organisation may speak at the invitation of the Leader/Committee Chairman in respect of an item of the agenda. However notice of a request to speak must be given to Democratic Services by no later than 5pm one clear working day before the relevant meeting. Public speaking is subject to the following time limits:

the total time for speaking on an item on the agenda is 12 minutes;  
within that 12 minute period, each speaker has a maximum of 3 minutes;

**15.2** In addition to the 12 minutes, a Parish or Town Council representative may be allocated a maximum of 3 minutes each;  
where there are several speakers, they will be asked to appoint a spokesperson to represent all views;

**15.3** When these times have expired, speakers will not be allowed to speak further unless asked by the Leader/Committee Chairman to clarify a point of fact.

**15.4** The provisions relating to public speaking at Planning Committee set out at paragraph 30 below will apply to Policy and Resources Committee when acting as the Planning Referral body.

## **16 INVITATION OF THIRD PARTIES TO COUNCIL AND COMMITTEE MEETINGS**

**16.1** An ordinary meeting of Council or a Committee may invite, through the Leader or Chairman, a third party to attend a meeting and speak and answer questions on a particular item on the agenda.

**16.2** An item on the agenda of an ordinary meeting of Council/Committee may be deferred if Council or the Committee agrees that a third party contribution to the discussion is necessary.

## **17 MOTIONS ON NOTICE**

**17.1** Except for motions which can be moved without notice under Rule 18, written notice of every motion must be delivered to the proper officer not later than six clear working days before the meeting of the Council at which it is to be moved. Motions will be set out in the summons for the Council in the order received, with the names of the signatories unless the Councillor giving notice states, in writing, that they propose to move it at a later meeting or withdraw it.

**17.2** Notices of motions will be entered in a book open to public inspection.

**17.3** Amendments to the budget are to be made in writing and delivered to the Proper Officer by 5pm on the Monday before the meeting. In proposing any changes to the budget any amendment must ensure that the proposal achieves a balanced budget.

**17.4** If a motion set out in the summons is not moved by a Councillor who gave notice or by another Councillor it will, unless postponed by the Council, be withdrawn.

**17.5** If the subject of a motion comes within the province of any Committee(s) or Sub-Committee(s) it will, on being moved and formally seconded, be referred to the relevant Committee(s) or Sub-Committee(s), or to other such forum as the Mayor may determine, but before such referral the Notice of Motion will be debated at the Council meeting and the debate will be subject to the following controls:

- (a) The debate will be at the discretion and control of the Mayor; and
- (b) Where possible Officers will provide a factual briefing note to assist Councillors in the debate.

However the Mayor may, if s/he considers it convenient and conducive to the dispatch of business or to be of sufficient urgency, allow the motion to be dealt with at the Council meeting.

**17.6** If the mover of the motion is not a member of Committee(s) or Sub-Committee(s) to which it has been referred s/he will be entitled to attend the meeting of the Committee(s) or Sub-Committee(s) to put forward his/her view but not vote on the matter or propose or second any motion or amendment.

**17.7** Every motion must be relevant to the Council's powers or duties or to a matter which affects the Borough.

**17.8** Any motion which in the opinion of the proper officer after consultation with the Head of Legal Partnership is out of order, or illegal, will be submitted to the Mayor who will decide whether it is accepted and the proper officer will notify the Councillor(s) accordingly.

## **18 MOTIONS WITHOUT NOTICE**

The following motions may be moved without notice:

- (a) to appoint a chairman of the meeting at which the motion is moved;
- (b) in relation to the accuracy of the minutes;
- (c) to change the order of business in the agenda;
- (d) to refer something to an appropriate body or individual;
- (e) to appoint a Committee or Councillor arising from an item on the summons for the meeting;

- (f) to receive reports or adoption of recommendations of Committees or officers and any resolutions following from them;
- (g) to withdraw a motion;
- (h) to amend a motion;
- (i) to proceed to the next business;
- (j) to move;
- (k) to adjourn a debate;
- (l) to adjourn a meeting;
- (m) before the hour of 10.30 pm being reached to extend the meeting until 11.00 pm in accordance with Council procedure rule 10(a);
- (n) to suspend a particular Council procedure rule;
- (o) to exclude the public and press in accordance with the Access to Information Rules;
- (p) to not hear further a Councillor named under Rule 25.3 or to exclude them from the meeting under Rule 25.4 ;
- (q) to give the consent of the Council where its consent is required by this Constitution;
- (r) to extend the time limit for speeches;
- (s) to determine the time and date of the adjourned meeting in accordance with Council procedure rule 10(b); and
- (t) to put the motion in parts to the vote.

## **19 RULES OF DEBATE**

### **19.1 No speeches until motion seconded**

No speeches may be made after the mover has moved a proposal and explained the purpose of it until the motion has been seconded.

### **19.2 Right to require motion in writing**

Unless notice of the motion has already been given, the Mayor may require it to be written down and handed to him/her before it is discussed.

### **19.3 Secunder's speech**

When seconding a motion or amendment, a Councillor may reserve their speech until later in the debate.

#### **19.4 Content and length of speeches**

Speeches must be directed to the question under discussion or to a personal explanation or point of order. No speech may exceed three minutes without the consent of the Mayor, except when moving a motion submitted in accordance with rule 17 above, when the mover will be entitled to speak for five minutes, or except when a Group Leader is moving his/her Group's budget proposals at the Budget Making Council, when the mover will be entitled to speak for ten minutes.

#### **19.5 When a Councillor may speak again**

A Councillor who has spoken on a motion may not speak again whilst it is the subject of debate, except: to speak once on an amendment moved by another Councillor;

- (a) to move a further amendment if the motion has been amended since s/he last spoke;
- (b) if his/her first speech was on an amendment moved by another Councillor, to speak on the main issue (whether or not the amendment on which s/he spoke was carried);
- (c) in exercise of a right of reply;
- (d) on a point of order; and
- (e) by way of personal explanation.

#### **19.6 Amendment to motions**

- (a) An amendment to a motion must be relevant to the motion and will either be:
  - (i) to refer the matter to an appropriate body or individual for consideration or reconsideration;
  - (ii) to leave out words;
  - (iii) to leave out words and insert or add others; or
  - (iv) to insert or add words.

as long as the effect of (ii) to (iv) is not to negate the motion.

- (b) Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of.
- (c) If an amendment is not carried, other amendments to the original motion may be moved.
- (d) If an amendment is carried, the motion as amended takes the place of

the original motion. This becomes the substantive motion to which any further amendments are moved.

- (e) If there are no further amendments the Mayor will put the substantive motion to the vote.

### **19.7 Alteration of motion**

- (a) A Councillor may when moving a motion of which s/he has given notice alter it with the consent of the meeting and the other signatories. The meeting's consent will be signified without discussion.
- (b) A Councillor may alter a motion which s/he has moved without notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.
- (c) Only alterations which could be made as an amendment may be made.

### **19.8 Withdrawal of motion**

A Councillor may withdraw a motion which s/he has moved with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion. No Councillor may speak on the motion after the mover has asked permission to withdraw it unless permission is refused.

### **19.9 Right of reply**

- (a) The mover of a motion has a right to reply at the end of the debate on the motion, immediately before it is put to the vote.
- (b) The mover of the amendment has a right of reply to the debate on his/her amendment (before the right of reply of the mover of the original motion).
- (c) If an amendment is moved, the mover of the original motion has the right of reply at the close of the debate on the amendment, if s/he has spoken on it.

### **19.10 Motions which may be moved during debate**

When a motion is under debate, no other motion may be moved except the following procedural motions:

- (a) to withdraw a motion;
- (b) to amend a motion;
- (c) to proceed to the next business;
- (d) to move;
- (e) to adjourn a debate;
- (f) to adjourn a meeting;



- (g) that the meeting continue until 11.00pm;
- (h) to exclude the public and press in accordance with the Access to Information Rules; or
- (i) to not hear further a Councillor named under Rule 25.3 or to exclude them from the meeting under Rule 25.4.

#### **19.11 Closure motions**

- (a) A Councillor may move, without comment, the following motions at the end of a speech of another Councillor:
  - (i) to proceed to the next business;
  - (ii) that the question be now put;
  - (iii) to adjourn a debate; or
  - (iv) to adjourn a meeting.
- (b) If a motion to proceed to next business is seconded and the Mayor thinks the item has been sufficiently discussed, s/he will give the mover of the original motion a right to reply and then put the procedural motion to the vote.
- (c) If a motion that the question be now put is seconded and the Mayor thinks the item has been sufficiently discussed, s/he will put the procedural motion to the vote. If it is passed s/he will give the mover of the original motion a right to reply before putting his/her motion to the vote.
- (d) If a motion to adjourn the debate or to adjourn the meeting is seconded and the Mayor thinks the item has not been sufficiently discussed and cannot reasonably be so discussed on that occasion, s/he will put the procedural motion to the vote without giving the mover of the original motion the right of reply.

#### **19.12 Point of order**

A Councillor may raise a point of order at any time. The Mayor will hear them immediately. A point of order may only relate to an alleged breach of these Council Procedure Rules or the law. The Councillor must indicate the rule or law and the way in which s/he consider it has been broken. The ruling of the Mayor on the matter will be final.

#### **19.13 Personal explanation**

A Councillor may make a point of personal explanation at any time. A personal explanation may only relate to some material part of an earlier speech by the Councillor (whether or not made at the meeting) which may appear to have been misunderstood in the present debate. The ruling of the Mayor on the

admissibility of a personal explanation will be final.

## **20 PREVIOUS DECISIONS AND MOTIONS**

### **20.1 Motion to rescind a previous decision**

A motion or amendment to rescind a decision made at a meeting of Council within the past six months cannot be moved unless the notice of Motion is signed by at least one third of the whole number of the Council

### **20.2 Motion similar to one previously rejected**

A Motion or amendment in similar terms to one that has been rejected at a meeting of Council in the past six months cannot be moved unless the notice of Motion or amendment is signed by at least one third of the whole number of the Council Members. Once the Motion or amendment is dealt with, no one can propose a similar Motion or amendment for six months.

## **21 LEADERS REPORT ON CURRENT ISSUES**

**21.1** At every Ordinary Meeting of the Council (except the Annual Meeting) after the Question and Answer session dealing with questions by Councillors, the Leader shall report to the Council on current issues.

**21.2** The Leaders of every other Group shall then have the right to respond to the issues raised.

**21.3** Each Group Leader may speak for up to five minutes.

**21.4** After the Leader and the other Group Leader have spoken the Mayor will open the item to questions from Councillors for a period of fifteen minutes.

**21.5** Questions to be asked by Councillors as set out in 21.4 above will be limited to those issues raised by the Leader and the other Group Leaders in their speeches. Questions will be answered as directed by the questioner and will not require a response from all Group Leaders. The Mayor will be the sole determinant of whether the question relates to the issues raised in these speeches.

## **22 VOTING**

**22.1** Unless this Constitution (or the law) provides otherwise, any matter will be decided by a simple majority of those Councillors voting and present in the room at the time the question was put.

### **22.2 Mayor's casting vote**

If there are equal numbers of votes for and against, the Mayor will have a second or casting vote, regardless of whether s/he has used his/her first vote. There will be no restriction on how the Mayor chooses to exercise a casting vote.

## Council – 25 September 2019 – Motion on Access to Information Briefing Note

- The provisions covering exempt information and access to information are set out in the Local Government Act 1972 as amended (by the Local Government (Access to Information) Act 1985 and the Local Government (Access to Information) (Variation) Order 2006 amongst others). The Council's constitution sets out, with regard to Members, how those rules are applied locally.
- It is important to understand that there are two types of 'private' information in this context. They are:
  - Exempt – this is information where the proper officer has determined that the information should not be made public. This is only possible where the information falls under one of the exempt categories in Part I of Schedule 12A to the Local Government Act 1972.
  - Confidential – this is information supplied to us confidentially under another mechanism – it may have come from the police, the MoD or some other source and we would be breaking the law if we released it without express permission to do so.
- The Motion on the papers specifies exempt information and does not specify confidential information.
- The exempt paragraphs under Part I of Schedule 12A of the Local Government Act 1972 are:
  - 1 - Information relating to any individual.
  - 2 - Information which is likely to reveal the identity of an individual.
  - 3 - Information relating to the financial or business affairs of any particular person (including the authority holding that information).
  - 4 - Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
  - 5 - Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
  - 6 - Information which reveals that the authority proposes— (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment
  - 7 - Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
- The motion relates to making exempt information available to all Councillors by default. The current status is that Members of Committees are provided with exempt information and other Councillors have to demonstrate a 'need to know' (to the Monitoring Officer) before the information is made available to them. By virtue of the nature of the test, this is done on a case by case basis.
- The "need to know" approach currently adopted by the Council is in line with the common law right (*R v Birmingham City Council ex p O (1983)*) which established the principle that Councillors had a right of access to material within the possession of the Council if they could demonstrate a "need to know". The proposed motion will be departing from the common law principle and the practice adopted by other Councils.
- It is vital that the implications of blanket access for Councillors and removing the 'need to know' requirement are fully considered. A simple example would be as follows:
  - The Council is looking to purchase a piece of land that is valued at £2.5m
  - The Policy and Resources Committee authorise the Director of Finance and Business Improvement to purchase the land with authorisation to spend up to £3m.

The landowner is a Councillor who has a registered DPI and also has access to the exempt information (under paragraph 3 financial/business affairs)

- The Councillor now knows that they could hold out for £3m from the Council – which prejudices the Council's interests.

(The above examples and other scenarios may hinder the Council discharging its statutory obligation eg the obligation to secure the best price reasonably obtainable under section 123(2) the Local Government Act 1972; third party information may be compromised leading to a possible contractual breach resulting in a claim for compensation / court proceedings).

- These implications, and any others, will need to be considered in detail by Democracy and General Purposes when they consider the motion and any subsequent changes to the constitution.

## GUIDANCE NOTE ON CONFIDENTIAL AND EXEMPT INFORMATION

### MAIDSTONE BOROUGH COUNCIL

#### 1. Introduction

We have prepared this briefing note to assist officers and members to understand the statutory requirements about confidential and exempt information at meetings and to provide guidance on when and how to exclude such items from public disclosure when appropriate.

2. The legislation is set out in the local Government Act 1972 and also in the Access to Information Procedure Rules. Members and officers will find the Access to Information Procedure Rules in Part 3.2 of the Constitution.
3. There are different rules about information classed as “confidential” and information classed as “exempt”.

#### Confidential Information<sup>1</sup>

4. A local authority **must** exclude the public or press from a meeting during an item of business if it includes confidential information.
5. Confidential information is defined as:
  - Information provided to the local authority by a government department that forbids disclosure of the information to the public.
  - Information that is prohibited from being disclosed to the public under legislation or court order (for example, under the Data Protection Act 1998 or the Freedom of Information Act 2000).
6. A meeting does not need to pass a resolution to exclude the public before discussing an item of business that includes confidential information. Therefore, it is sufficient for a meeting chairman to request that the public withdraw so that the item of business containing confidential information can be dealt with in private.
7. If the Council is planning to exclude the public or press from part of a meeting, any relevant documents should be marked as confidential before the meeting.

#### Exempt Information<sup>2</sup>

8. A local authority **can** exclude the public or press from a meeting by resolution during an item of business if the item includes exempt information. Note, this provision is not mandatory and therefore the relevant committee can choose whether to exclude the public or not. Before doing so, the committee must pass a resolution to exclude.
9. A resolution must:
  - Identify the proceedings (or part) to which it applies.

---

<sup>1</sup> Section 100A(2) and (3) of the Local Government Act 1972

<sup>2</sup> Section 100A (4) and (5) of the Local Government Act 1972

- Describe the exempt information that gives rise to the decision to exclude the public from the meeting

10. If the committee is satisfied that the above criteria have been met, it will pass a resolution allowing it to lawfully exclude the public during the relevant proceedings at a meeting. As with confidential information, any relevant documents should be marked as exempt before the meeting.

### **What is exempt information<sup>3</sup>?**

11. A list of exempt information is given below:

- Information relating to any individual.
- Information which is likely to reveal the identity of an individual.
- Information relating to the financial or business affairs of any particular person (including the authority holding that information). "Person" includes companies and other organisations.
- Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and any employees of, or office holders under, the authority.
- Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- Information which reveals that the authority proposes:-
  - To give under any legislation a notice under which requirements are imposed on a person; or to make an order or direction under any legislation.
- Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

### **The Public Interest Test**

All Councils are subject to strict rules on transparency and openness. A council can only consider information exempt if the public interest in maintaining the exemption outweighs the public interest in disclosing the information<sup>4</sup>. Members and officers are advised to keep committee discussions and reports in the public domain as much as possible. It is possible on occasions to publish an open report but keep the exempt information in an appendix which is not published.

Some practical examples of confidential and exempt information are given below for guidance:

---

<sup>3</sup> Part 1 of Schedule 12A of the Local Government Act 1972

<sup>4</sup> Part 2 of Schedule 12A of the Local Government Act 1972

### **Example 1**

In “Stoop v Council of the Royal Borough of Kensington and Chelsea and another” [1991], the court held that a planning committee meeting at which the developer and objectors were present was entitled to go into closed session. This was so the council could hear the advice of its solicitor on the likelihood of a successful appeal against the proposed development and costs being awarded to it if planning permission were refused. The court held that the solicitor’s advice could be held in private as it was exempt information under Schedule 12A of the LGA 1972.

Note: The relevant exemption is that of “legal professional privilege”

### **Example 2**

Officers report about future plans for some of the Council’s assets. The plans include details of investments and property development proposals. The report could be exempt as it falls within the exemption, “Information relating to the financial or business affairs of any particular person (including the authority holding that information)”. The definition of “financial or business affairs” includes contemplated as well as current or past activities<sup>5</sup>. Therefore any report of the council about its own future planned financial or commercial activities could be exempt.

### **Example 3**

Officers report on the outcome of contract negotiations with a company. The report contains commercially sensitive information about the company. The report could be exempt as it contains “Information relating to the financial or business affairs of any particular person (including the authority holding that information).”

### **Example 4**

During the progress of a controversial planning application, the Council seeks expert legal advice. Normally, such advice would be subject to legal professional privilege and therefore exempt. However, due to the level of local interest, the Council finds that, in applying the public interest test, the interest in disclosing the advice outweighs the need to keep it exempt and therefore publishes the full advice.

### **Example 5**

Central Government releases a briefing note to the Council marked “Strictly Confidential” which the Council wishes to discuss. This would be automatically exempt from publication as it is confidential and falls within the definition of “Confidential Information” above.

8 January 2019

**Patricia Narebor, Head of the Legal Partnership**  
**Estelle Culligan, Principal Solicitor**

**Mid Kent Legal Services**

---

<sup>5</sup> Part 3 of Schedule 12A of the Local Government Act 1972

Committee and has been determined by Policy and Resources Committee or a decision made by Policy and Resources discharging its function as the Planning Referral body) then any five Councillors may refer the matter to full Council by giving written notice to the Mayor who may reject the referral in consultation with the Deputy Mayor and with advice from the Chief Executive in the same manner as set out above.

- (7) The Council shall consider the matter; decide to endorse the original Policy and Resources Committee decision; or may substitute a different decision in place of the decision of the Committee. The decision of the Council on the matter shall be final.
- (8) In either case should new and relevant information come to light, or a more acceptable course of action be proposed which may resolve the matter to the satisfaction of the Committee, then a Committee Chairman, at the request of any three Councillors in writing, may choose whether to call another meeting of the original Committee to re-consider the decision within five working days of receipt of a referral. The referral to Policy and Resources Committee or the Council would then fall away and the matter would be treated as having been dealt with by the original service Committee. No further referral of the matter would be permitted.

MEETING OF MEMBERS WITH REPRESENTATIVES OF OUTSIDE BODIES  
(Minute 195 of General Purposes Committee 21 March 1990)

Where a meeting is held with representatives of an outside organisation and reference is made to the actions or comments of a Member of the Council who is not present at that meeting, before including a note of the actions or comments in the Minutes of that meeting or accepting as correct any minutes prepared by the representatives of the outside organisation containing such a note, the relevant Director or duly authorised Officer shall verify the position with the Member concerned.

## **3.2 ACCESS TO INFORMATION PROCEDURE RULES**

### **1. SCOPE**

These rules apply to all meetings of the Council, Committees, Panels and Sub-Committees (together called meetings).

Some meetings involve Councillors and officers; they may be briefings or agenda planning meetings and these are not open to the public nor are meetings of the political groups on the Council.

### **2. ADDITIONAL RIGHTS TO INFORMATION**

These rules do not affect any more specific rights to information given elsewhere in this Constitution or by the law.

### **3. RIGHTS TO ATTEND AND RECORD MEETINGS**



Members of the public may attend all meetings subject only to the exceptions in these rules.

Members of the public attending meetings of the Council and Committees in open session may record the meeting using whatever non-disruptive methods that they consider appropriate, including filming, photographing, audio recording and use of social media. Recording of any part of a meeting held in closed session is not permitted. Anyone filming a meeting is asked to only focus on those actively participating.

All attendees should be made aware that they may be filmed or recorded whilst attending a meeting and that attendance at the meeting signifies consent to this.

The Chairman of the meeting has the discretion to halt any recording for a number of reasons including disruption caused by the filming, recording or its transmission or the nature of the business being conducted.

Questions should be addressed to the Democratic Services Team at [committeeservices@maidstone.gov.uk](mailto:committeeservices@maidstone.gov.uk) (members of the press should contact the Press Office).

#### **4. NOTICES OF MEETINGS**

The Council will give at least five clear working days' notice of any meeting by posting details of the meeting at the offices of the Council unless the meeting is called at shorter notice, when details of the meeting will be posted as soon as it is called.

#### **5. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING**

The Council will make copies of the agenda and reports open to the public available for inspection at the designated office at least five clear working days before the meeting. If an item is added to the agenda later, the revised agenda will be open to inspection from the time the item was added to the agenda (where reports are prepared after the summons has been sent out, the designated officer shall make each such report available to the public as soon as the report is completed and sent to Councillors). Agendas and papers are available here: <http://www.maidstone.gov.uk/council/meetings,-minutes-and-agendas>

#### **6. SUPPLY OF COPIES**

The Council will supply copies of:

- (a) any agenda and reports which are open to public inspection;
- (b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- (c) if the proper officer thinks fit, copies of any other documents supplied to Councillors in connection with an item

to any person on payment of a charge for postage and any other costs, or electronically without charge.

## **7. ACCESS TO MINUTES ETC. AFTER THE MEETING**

The Council will make available for public inspection copies of the following for six years after a meeting:

- (a) the minutes of the meeting (or records of decisions taken, together with reasons), excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
- (b) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
- (c) the agenda for the meeting; and
- (d) reports relating to items when the meeting was open to the public.

## **8. BACKGROUND PAPERS**

### **8.1 List of background papers**

The author of a report will set out in every report which is not confidential or exempt a list of those documents (called background papers) relating to the subject matter of the report and where they can be inspected which in his/her opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) which have been relied on to a material extent in preparing the report

but this does not include published works or those which disclose exempt or confidential information (as defined in Rule 10).

### **8.2 Public inspection of background papers**

The Council will make available for public inspection for four years after the date of the meeting a copy of each of the documents on the list of background papers.

## **9. SUMMARY OF PUBLIC'S RIGHTS**

A written summary of the public's rights to attend meetings and to inspect and copy documents must be kept at and be available to the public at the Council's main offices.

## **10. EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS**

### 10.1 Confidential information – requirement to exclude public

The public must be excluded from meetings whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that confidential information would be disclosed.

### 10.2 Exempt information – discretion to exclude public

The public may be excluded from meetings whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that exempt information (see below) would be disclosed.

Where a meeting will determine any person’s civil rights or obligations, or adversely affect their possessions Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6, or the person who is the subject of the hearing requests that the matter is determined in private.

### 10.3 Meaning of confidential information

Confidential information means information given to the Council by a Government Department on terms which forbid its public disclosure, or information which cannot be publicly disclosed by Court Order.

### 10.4 Meaning of exempt information

Exempt information means information falling within the following categories:

Category	1 Condition
1. Information relating to any individual.	Information is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
2. Information which is likely to reveal the identity of an individual.	
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).*	
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and any employees of, or office holders under, the authority.	

5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals that the authority proposes:- a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or b) to make an order or direction under any enactment.
7. Information relating to any action taken or to be taken in connection with the prevention investigation or prosecution of crime.

\* Information is not exempt under paragraph 3 if it is required to be registered at Companies House or on any other public register.

Information falling within any of paragraphs 1-7 is not exempt by virtue of that paragraph if it relates to proposed development for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992.

#### **11. EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS**

If the proper officer thinks fit, the Council may exclude access by the public to reports which in his/her opinion relate to items during which, in accordance with Rule 10, the meeting is likely not to be open to the public. Such reports will be marked "Not for publication" together with the category of information likely to be disclosed.

#### **12. ADDITIONAL RIGHTS OF ACCESS FOR COUNCILLORS**

All Councillors will be entitled to inspect any document which is in the possession or under the control of the Council or its Committees where they are able to demonstrate a "need to know" to the satisfaction of the Monitoring Officer or his/her Deputy.

##### **Nature of rights**

These rights of a Councillor are additional to any other right he may have, for example a subject access right under the Data Protection Act.

##### COUNCILLORS RIGHTS TO INSPECT DOCUMENTS AND TAKE COPIES (Minute 12 Council Meeting 16 October 1996)

In addition to Members' other rights, all documents of the Council should be available and open for inspection and copying by all Members, provided either that the documents do not disclose exempt information as described in Schedule 12A to the Local Government Act 1972, or that the Member has a need to know the information contained in the document and has made a written declaration stating why inspection of the documents is necessary for the performance of their duties as a Councillor, provided that access to the

document will not be given if to do so would be a breach of the Data Protection Act or other legislation;

That all information obtained from an inspection and any copy document received shall be treated as confidential to the Member and shall be for his/her use as a Member of the Council only unless the Chief Executive, Director or duly authorised Officer concerned agrees at the time of inspection or supply of copy documents that this restriction can be relaxed; and

- 3.3 That in the event of the Chief Executive, Director or duly authorised Officer not agreeing that the restriction can be relaxed, the Member concerned shall have the right to require the matter to be referred to the relevant Committee and, if necessary, to the Council for final determination.**

### **3.4 MAIDSTONE YOUTH FORUM PROCEDURE RULES**

#### **1. Operation of the Maidstone Youth Forum**

The way in which the Maidstone Youth Forum operates is set out in the Maidstone Youth Forum Constitution, as agreed by members of the Forum. This includes, but is not limited to, the following issues:

- **Membership**
- **Budget**
- **Voting**
- **Work Programming**
- **Meeting Arrangements**

#### **2. Reports from the Maidstone Youth Forum**

- (a) Once it has formed recommendations on proposals, the Maidstone Youth Forum will prepare a formal report and submit it to the proper officer for consideration by the Policy and Resources Committee, or to the Council as appropriate (e.g. if the recommendation would require a departure from or a change to the agreed budget or policy framework).
- (a) The Committee/Council shall consider the report of the Maidstone Youth Forum within one month of it being submitted to the proper officer (Head of Policy and Communications)

#### **3. Protocol for Dealing with the Maidstone Youth Forum Reports Submitted to the Policy and Resources Committee**

- (a) Reports from the Maidstone Youth Forum will be submitted to the Policy and Resources Committee as a whole if the issue is cross-cutting.
- (b) When a report is submitted to the members of the Policy and Resources Committee, the Leader of the Council will assume responsibility for co-ordinating the response.

76. ORAL REPORT OF THE LICENSING COMMITTEE HELD ON 19 SEPTEMBER 2019

There was no report from the Licensing Committee on this occasion.

77. ORAL REPORT OF THE COMMUNITIES, HOUSING AND ENVIRONMENT COMMITTEE ACTING AS THE CRIME AND DISORDER COMMITTEE HELD ON 24 SEPTEMBER 2019

There was no report from the Communities, Housing and Environment Committee Acting as the Crime and Disorder Committee on this occasion.

78. NOTICE OF MOTION - ACCESS TO INFORMATION

Notice of the following motion had been given by Councillor Perry:

*Members of this Council are elected by the Residents of this Borough to represent their interests. And in order for Members to carry out their duties effectively the Council agrees that all committee agendas, reports and information relating to items on the agenda (Minutes etc.) should be made available to all Members; including information made exempt from publication under Paragraph 3 of Part I of Schedule 12A to the Local Government Act 1972.*

In moving the motion, with the agreement of his seconder (Councillor D Burton), and with the consent of the meeting, Councillor Perry deleted the words *Paragraph 3 of* from the sixth line.

During the discussion, the following suggested amendment was moved by Councillor Clark, seconded by Councillor English:

*Members of this Council are elected by the Residents of this Borough to represent their interests. In order for Members to carry out their duties effectively this Council agrees that all committee agendas and reports relating to items on the agenda (including minutes, supporting documentation and urgent updates) will be provided to committee members and made available to any other interested members on request.*

It was suggested that this amendment be further amended as follows:

Members of this Council are elected by the Residents of this Borough to represent their interests. In order for Members to carry out their duties effectively this Council agrees that all committee agendas and reports relating to items on the agenda (including minutes, supporting documentation, ~~and urgent updates~~ *and relevant exempt information*) will be provided to committee members and made available to any other interested members on request.

In accordance with Council Procedure Rule 17.5, the motion, having been moved and seconded, and the suggested amendments were referred to the Democracy and General Purposes Committee.

# Professional Fees of Mr Timothy Straker QC

VAT Registration No: 235416575  
Legal Aid Acc No: 6213D  
Date of Call: 28/07/1977



Mr Gary Rowland  
Mid Kent Legal Services  
Maidstone House  
King Street  
Maidstone  
Kent  
ME15 6JQ

4-5 Gray's Inn Square  
London  
Gray's Inn  
London WC1R 5AH  
DX 1029 LDE  
+44 (0)20 7404 5252  
  
clerks@4-5.co.uk  
www.4-5.co.uk

Birmingham  
2nd Floor  
Two Snow Hill  
Birmingham B4 6GA  
+44 (0)121 231 7430

Solicitor's Reference: **PN/M013511 - CA35525**  
Supplier ID:  
Purchase Order No:

Date:  
23/10/2019

Please quote on all correspondence Case Reference  
Number: **135530**

*In the matter of*  
**IN THE MATTER OF COUNCILLOR ACCESS TO CONFIDENTIAL/ EXEMPT INFORMATION Local Government Act 1972, section 100A and 100I -CA35525**

Court Reference:

Civil, Local Authority

Date	Description	Amount	Vat%	Vat
16/10/2019	* Instructions by email			
23/10/2019	* Opinion (30paras)	£4,500.00	20.0%	£900.00

\* indicates a previously unbilled item

<b>VAT SUMMARY</b> 20.0% (FEE) Amount: £4,500.00, VAT: £900.00	<b>Total Fees</b>	<b>£4,500.00</b>	
	<b>Total VAT</b>	<b>£900.00</b>	
	<b>Total Due</b>	<b>£5,400.00</b>	

**Please quote 135530 and barrister name on all payments INCLUDING BACS PAYMENTS**

Please make cheques payable to Mr Timothy Straker QC.

We also accept payment by bank transfer to the following account: **4-5 Gray's Inn Square**

**Acc No: 30545834 Sort Code: 23-05-80 IBAN: GB26MYMB23058030545834**

Fees are payable within 30 days of the date of the invoice / fee note.

PLEASE QUOTE OUR REFERENCE NO. ON ALL CORRESPONDENCE \*\* VALID ONLY WHEN RECEIPTED - THIS IS NOT A TAX INVOICE \*\*

Printed on 23/10/2019 by: Tom Grove