

INTRODUCTION

The council's constitution

Cherwell District Council has agreed this constitution which sets out how the council operates, how decisions are made and the procedures which are followed. The processes are intended to make the council transparent and accountable to local people. Some of these processes are required by the law, while others are a matter for the council to choose. In the case of any conflict between this constitution and legislation, the legislation will prevail.

What is in the constitution?

The constitution sets out who has the power to take what decisions, how those decisions are taken and the codes and protocols which are followed when we make decisions .

There are three parts:

1. The scheme of delegation (who does what)
2. The rules of procedure (how they do it)
3. Codes and protocols (the expected standards of behaviour)

In addition there is annually updated information (such as a list of current councillors and scheduled meetings for the year) which are not part of the constitution but are available from our website or in hard copy.

The following is a list of annually updated information which can always be found on our website (www.cherwell.gov.uk) or obtained in hard copy by contacting Legal and Democratic Services,

- Calendar of meetings (these are agreed for a whole municipal year ahead, that is from May to the following April). Exceptional or special meetings may be added to this. Meetings may be cancelled if there is no business or may be moved if there are deadlines to be met, for example, to ensure a response to government consultation is sent in time.
- Agenda for all meetings
- Minutes of all meetings
- A list of wards in the district
- A list of district councillors and contact details
- Details of who on the executive is responsible for what (called "portfolio holders").
- Details of who is on which committee, joint committee and who represents the council on which outside body.

How the council operates

The council is composed of 50 councillors with one-third elected three years in four. Councillors serve a four year term. A councillor elected at a by-election will serve the remainder of the four year term for the particular seat in question. Councillors are democratically accountable to residents of their Ward. The overriding duty of councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them. Councillors represent their communities and act as advocates for individual constituents. They have to balance different interests and govern for the good of the area as a whole.

Councillors must be registered voters of the Cherwell district, or must own or lease land in the district for at least the last 12 months preceding their consent to be nominated, and must not otherwise be disqualified.

Councillors have to agree to follow a code of conduct to ensure high standards in the way they undertake their duties. The code of conduct is set out in this constitution. The council's standards committee trains and advises them on the code of conduct, investigates and considers whether to take action on any alleged breaches.

All councillors meet together as "The Council". Meetings of the council are open to the public and press, unless the council has passed a resolution that they be excluded on the grounds that information deemed to be "exempt" i.e. personal or confidential, as defined by statute, is likely to be revealed. At council meetings, councillors decide the council's overall policies and set the budget each year. The council is responsible for appointing the Leader and various committees, and for holding the executive and the committees to account for the decisions they take.

Principles of decision making

Any decision made by the council will be made in accordance with the following principles and in accordance with the procedure rules set out in part two of this constitution,

- Proportionality, that is, the action taken will be proportionate to the desired outcome
- Decisions will be taken following due consultation and taking into consideration professional advice from officers
- Due regard will be shown for human rights and all decisions will be based on balancing the rights of the individual against the public good
- Open transparent decision making
- Clarity in the aim and desired outcome of decisions
- Decisions will be taken that comply with the law and this constitution

When acting in a quasi judicial role the council will follow a proper procedure which complies with the rules of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.

Access to information by councillors

All councillors are entitled to inspect any document (except those only available in draft) in the possession or under the control of the Council unless it contains exempt or confidential information (as defined and set out in this Introduction) in which case Councillors will be required to demonstrate a need to know. This does not preclude the Council from deciding to provide members with information over and above this entitlement.

The Executive

Under the Local Government Act 2000, Cherwell District Council chose to have an executive with a Leader.

The executive takes strategic key decisions. Individual executive members are responsible for many day to day decisions. The executive is made up of a Leader and other councillors. The Leader is appointed to the executive by The Council. The Leader then appoints individual councillors to the other positions in the executive. When major (or “key”) decisions are to be discussed or made, these are published in the Leader’s Forward Plan in so far as they can be anticipated. All meetings of the executive are open to the public and press except where “exempt” i.e. personal or confidential matters are being discussed. The executive has to make decisions which are in line with the council’s overall policies and budget. If it wishes to make a decision which is outside the budget or policy framework, this must be referred to The Council to decide.

Certain decisions, in particular non-key decisions, may be taken by individual members of the executive (called portfolio holders).

The Council has discretionary powers to set up area committees or forums but has decided not to do so at this time.

The Council may establish joint arrangements or joint committees in accordance with current legislation.

Overview and Scrutiny

The Overview and Scrutiny Committee and the Resources and Performance Scrutiny Board carry out the overview and scrutiny functions and support the work of the Executive and the Council as a whole. They allow citizens to have a greater say in Council matters and may hold public inquiries into matters of local concern. This may include reviewing the work of the Council’s partners and other public sector organisations. Overview and scrutiny meetings are open to the public. The committees publish reports and recommendations which advise the Executive and the Council as a whole on its policies, budget and service delivery. The Overview and Scrutiny Committee also monitors the decisions of the Executive as published in the Forward Plan (as set out in the Executive Procedure Rules). The Overview and Scrutiny Committee can

“call-in” or challenge a decision which has been made but which has not yet been implemented.

The Council also appoints members to any countywide joint overview and scrutiny committee(s).

Non-Executive Decisions

Decisions on some matters (for example planning applications and licensing) cannot be taken by the Executive by law, and are either taken by full Council or delegated instead to "regulatory committees" or to staff. Terms of reference for committees and delegations to staff are set out in part one of this constitution.

The Council's Staff

The Council employs staff to give advice, implement decisions and manage the day-to-day delivery of its services. The authority to employ staff below Chief Officer level rests with the Head of the relevant Service. Strategic Directors and Heads of Service are appointed by the Personnel Committee. The Head of Paid Service is appointed by full Council.

The Council has three statutory posts:

The **Head of Paid Service** (as required by section 4 of the Local Government and Housing Act 1989)

The **Chief Finance Officer** (as required by section 151 of the Local Government Act 1972 and frequently referred to as the “section 151 officer”)

The Monitoring Officer

The statutory posts of Chief Finance Officer and Monitoring Officer have the right by law to require adequate resources to be made available to them to carry out their role. The specific responsibilities of these statutory posts are,

Head of Paid Service – responsible for overall management and operation of the council which includes management of the staff who work for the council. Must report to council, executive and all other committees when required to do so. Responsible for ensuring the proper use of evaluation systems for determining what staff are paid and reporting as and when required on the number and grade of staff required.

Chief Finance Officer – responsible for the administration of the council's finances. Has a specific duty to make a public report in specified cases of actual or anticipated financial misconduct (section 114 of the Local Government Finance Act 1988).

Must nominate an appropriately qualified member of staff to deputise in their absence.

Monitoring Officer – responsible for ensuring that the council acts within the law. Has a specific duty to make a public report if at any time they think that any proposal, decision or failure to act by the council may break the law or give rise to a finding of maladministration (section 5 of the Local Government and Housing Act 1989).

Must nominate an appropriately qualified member of staff to deputise in their absence.

There is a code of practice which governs the relationship between staff and councillors. There is also a code of conduct for staff. Both these codes are in part three of the constitution.

Certain decisions are delegated to staff as set out in the council's scheme of delegation in part one of this constitution.

Legal and financial procedures

The council shall have legal and financial procedure rules as set out in this constitution.

Financial Regulations will be reviewed regularly by the Chief Finance Officer to ensure they are fit for purpose. Council will approve all changes other than those required by the fact of a change in law which the Chief Finance Officer has delegated authority to make.

The Contract Rules of Procedure will be reviewed regularly by the Chief Finance Officer and the monitoring officer to ensure they are fit for purpose. Council will approve all changes other than those required by the fact of a change in the law which the monitoring officer has delegated authority to make.

The scheme of delegation sets out the authority to sign documents.

The Head of Legal and Democratic Services will keep the council's seal. All documents that should be sealed will be sealed in accordance with the scheme of delegation as set out in this constitution. The Head of Legal and Democratic Services, or nominated deputies within Legal Services, will seal all council documents unless there are exceptional circumstances when a Strategic Director or the Chief Executive has specific authority to do so.

Summary of the rights of the public

This summary of rights explains how members of the public can participate in the democratic decision making processes of the council and how they can access information relating to council and committee meetings.

Voting and petitions

If you are registered to vote in the district you have a right to vote and sign a petition to request a referendum for an elected mayor.

You may also present petitions to council and committee meetings, providing that it meets the requirements set out in the meeting procedure rules and the procedure rules for that particular committee as set in the constitution.

Information

You have the right to inspect the council's accounts and make their views known to the external auditor. The external auditor will visit the council on a specified day so the public can make their views known. Fourteen days notice of the visit will be given in at least one local newspaper. The accounts will be available for public inspection twenty working days before the auditor's visit.

Complaints

You have the right to complain about the actions of the council, the staff or councillors to:

- the council under its complaint scheme
- the ombudsman after exhausting the council complaint scheme
- the monitoring officer about a breach of the councillor code of conduct.

Responsibilities of the public

The council expects the public to behave responsibly in exercising these rights. The council will not tolerate violent, abusive or threatening behaviour to councillors or staff working for, or on behalf of, the council.

The public are required to comply with various laws, by-laws, rules and regulations which are enforced by the council and may incur civil or criminal penalties if they do not do so.

Meetings of the council and committees

Notice of meetings

The council will give at least five clear days' notice of any meeting by posting details of the meeting at the council's main offices at Bodicote House, Bodicote, Banbury and normally on the council website (www.cherwell.gov.uk), unless the meeting is convened at shorter notice as a matter of urgency.

Access to agenda and reports before the meeting

The council will publish copies of the agenda for meetings and reports which are to be considered on the council website at least five clear days before the

meeting and copies will be available for inspection at the council's main office. If an item is added to an agenda later, if it is urgent business, the report will be available to members of the public as soon as possible and sent to councillors on the committee.

Agendas and reports will be supplied on request to members of the public. Agendas and reports are available for a minimum of six years after the date of the meeting.

Reports included in agendas will set out a list of background papers (non-published material used in creating the report) relating to the subject matter of the report. These background papers will be supplied at the request of members of the public and are available from the report author for a minimum of four years after the date of the meeting.

The council may make a reasonable charge for the supply of agenda, reports, minutes and background papers to cover costs.

Attending a meeting

Members of the public may attend meetings of the council and its committees, except for example when confidential or exempt matters are being discussed. Unless otherwise stated in the notice of the meeting, meetings are held in the council's main offices at Bodicote House, Bodicote, Banbury. If you wish to attend a meeting customer service staff at reception will direct you to the relevant meeting room.

Speaking at a meeting

Members of the public can speak request to speak at a meeting. Further information on how to speak at a meeting can be found in the meeting procedure rules and procedure rules for the particular committee as set out in the constitution.

Confidential and exempt matters

Confidential

Members of the public will be asked to leave a meeting if it is likely that confidential information will be disclosed. This will usually be stated on the agenda for the meeting. Confidential information is 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.

Exempt

Members of the public may also be asked to leave a meeting if it is likely that exempt information will be disclosed. This decision is at the discretion of the meeting and will be made based on advice from officers. In making a decision to exclude the public, the committee will apply the public interest test, that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Exempt information is information falling into one or more of the categories set out in the table below, subject to qualifications set out in the constitution.

Paragraph Number	Category
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: <ul style="list-style-type: none"> <li data-bbox="507 1122 1353 1189">(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or <li data-bbox="507 1218 1257 1256">(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.
7A	[7A – 7C apply only to certain meetings of the Standards Committee] Information which is subject to any obligation of confidentiality.
7B	Information which relates in any way to matters concerning national security.
7C	The deliberations of a standards committee or of a sub-committee of a standards committee established under the provisions of Part III of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of that Act.

If reports to be included in the agenda contain confidential or exempt information they will be marked 'not for publication' together with the category of information likely to be disclosed.

Minutes of a meeting

The council will produce minutes of meetings which record the decisions taken by a committee and the reasons for the decisions and options considered in the case of the executive. When exempt or confidential information is disclosed at a meeting a summary minute will be published in the public minutes, in addition to exempt or confidential minutes.

Minutes will be published on the council website and available on deposit at the council's main office for a minimum of six years after the date of the meeting.

Forward Plan

Members of the public can find which major decisions are going to be discussed and determined by the executive from the Leader's Forward Plan. The Forward Plan covers a four month period and is published on the council's website on a monthly basis.

The public have the right to,

- vote at local elections if they are registered
- sign a petition for a local referendum for an elected mayor
- contact their local councillor about any matters of concern to them
- a copy of the constitution
- attend meetings of the council and its executive and committees except where, for example, personal or confidential matters are being discussed
- see reports and background papers and any records of decisions made, except where confidential or personal information would be disclosed
- address meetings of the council, executive, and various committees, subject to the Council's rules for public participation at meetings
- find out, from the executive's forward plan, what major (key) decisions are to be discussed or decided by the executive, individual executive members or officers, and when
- inspect the council's accounts and make their views known to the external auditor (known as the district auditor)

- complain to the council about the standards of service, action or lack of action by the council or its staff
- complain to the ombudsman if they think the council has not followed its procedures properly (however, they should only do this after using the council's own complaints process)
- complain to the standards committee if they have evidence which they think shows that a councillor has not followed the council's code of conduct.

The council welcomes participation by its residents in its work and undertakes extensive consultation about its policies and services. For more specific advice on your rights, please contact the appropriate council department, or if you are not sure which department to contact, ask for the Legal and Democratic Services department.

Rules about this constitution

Suspension: the rules of procedure in part two of this constitution may be suspended where such a proposal is made and seconded at a formal meeting and the suspension is agreed upon by a majority of those present. The purpose of any suspension should be to enhance the democratic process rather than restrict it.

Interpretation: this constitution will be interpreted in accordance with the advice given by the statutory officers at any formal meeting or their representatives at that meeting.

Publication: the constitution will be made available on the council's website and hard copies of the whole or any part will be available on request subject to the payment of a reasonable fee if anyone wishes to have their own copy.

Changes: the monitoring officer is responsible for assessing the effectiveness of the constitution and recommending changes in the light of legislation or best practice. The monitoring officer may make factual changes to the constitution as necessary in order to ensure that the constitution complies with the law.

Any significant proposed amendments to this constitution shall be considered by the executive prior to it being considered by council. The monitoring officer shall ensure that, where appropriate, members of relevant council committees are consulted on proposed amendments, prior to their consideration by the executive and that the responses to the consultation are included in any subsequent report.