



COTSWOLD
DISTRICT COUNCIL

Council name	COTSWOLD DISTRICT COUNCIL
Name and date of Committee	COUNCIL - 25 SEPTEMBER 2024
Subject	REPORT OF THE CONSTITUTION WORKING GROUP – PLANNING PROTOCOL AND SCHEME OF DELEGATION
Wards affected	All
Accountable member	Councillor Juliet Layton, Cabinet Member for Planning and Regulatory Services Email: Juliet.Layton@cotswold.gov.uk
Accountable officer	Jon Dearing, Assistant Director for Planning & Sustainability Email: jon.dearing@cotswold.gov.uk
Report author	Richard McEllistrum, Interim Development Manager Email: richard.mcellistrum@cotswold.gov.uk
Summary/Purpose	The purpose of the report is to consider updates to the planning scheme of delegation and the planning protocol following review in practice of the updated format of those parts adopted from 1 st April 2024, for the benefit of all stakeholders.
Annexes	Annex A - Existing Part C4 Scheme of Delegation (extract) with proposed tracked changes Annex B - Existing Part E5 Planning Protocol with proposed tracked changes



Recommendation(s)	<p>That Council resolves to:</p> <ol style="list-style-type: none">1. Approve the changes and corrections to the Scheme of Delegation in respect of the Planning & Licensing Committee.2. Approve the changes and corrections to Planning Protocol in respect of the Planning & Licensing Committee.
Corporate priorities	<ul style="list-style-type: none">• Delivering Good Services
Key Decision	NO
Exempt	NO
Consultees/ Consultation	<p>Elected Members of the Constitution Working Group on 10 September 2024; Local Management Team; Assistant Director – Assistant Director - Resident Services and; Interim Head of Legal Services.</p>



1. EXECUTIVE SUMMARY

- 1.1 The report seeks to review and update the Council's Scheme of Delegation (Part C4) in respect to Development Management matters, principally in regard to identified inconsistencies, duplications, omissions, incomplete or out of date references.
- 1.2 The report also seeks (principally) to modify and correct the Planning Protocol (Part E5) in regard to the provision allowing a Member, having successfully sought for an application to be referred to the Planning and Licensing Committee (hereafter referred to as the 'Committee'), to be able to speak at that Committee following the conclusion of the debate regarding that application.
- 1.3 The report also recommends that inconsistent references to the manner through which Members may make such a referral request are clarified and made consistent.

2. BACKGROUND

- 2.1 The Constitution sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people.
- 2.2 The Constitution must contain:
 - the Council's standing orders/procedure rules;
 - the members' code of conduct;
 - such information as the Secretary of State may direct;
 - such other information (if any) as the authority considers appropriate

- 2.3 The April 1st update to these elements within the Constitution followed advice given by the Planning Advisory Service dated May 2022, which highlighted potential issues with Cotswold District Council scheme of delegation. Those changes assisted in the streamlining of the planning process giving applicants and stakeholders more certainty and to eradicate potential delays which could be avoided.
- 2.4 It has recently been observed that both Parts C4 (the Scheme of Delegation) and E5 (the Planning Protocol) would benefit from a check for consistency, completeness and accuracy.
- 2.5 The ability set out within the Planning Protocol for a Member who refers the application to Committee to speak prior to and also following the completion of the debate regarding that application is noted to be highly unusual, and contrary to the typical and logical sequence of decision making that a Committee carries out. This element, having been previously part of the Constitution, had been removed by the Council, and yet was reintroduced into the version adopted as of 1st April. No reference was given in the supporting reports to either the Constitution Working Group of 7th November 2023, or to Full Council in January 2024, and as such it is unclear why this element became part of the draft new Protocol put forward to Members for adoption.

3. CHANGES TO THE SCHEME OF DELEGATION

- 3.1 The Scheme of Delegation (Part C4, hereafter, the 'Scheme') is the document that allows the Council's Development Management and Planning functions to operate their day to day work in determining planning applications and taking enforcement and other such actions. The document is used on a day to day basis as a guide for Planning Officers to ensure that decisions are made in a safe and legal manner.

3.2 The proposed modifications to the Scheme are set out within a tracked change document attached as Annex 1. A significant proportion of those changes are straightforward and relate to:

- Applying section lettering to different elements within the table (A, B, C etc) to more easily differentiate the elements and for ease of later reference.
- To correct and clarify references to types of applications, consents and notifications, to avoid more than one area of guidance applying to the same application type (such as 3.D which sets out the process for 'Technical Details Consent' applications, which are already explicitly within the scope of 3.A).
- To clarify and make consistent references to 'Ward Members' or 'Members' to avoid unintended consequences inhibiting the intended operation of application referral processes (such as 3.A(iv) which implies that the 28 day time limit applied only to the Ward Member, and not to Members of another ward).
- To amend within 3.A(iv) and 3.B(iv) that the 28 day notification period runs from the validation date of the application, not the date of receipt of the notification (which is already set out at 2.3 of the Planning Protocol).
- To modify language (such as 3.C(iii) which in it's current form allows Members to require Prior Approval applications be referred to Committee, as opposed to 'request' that they do so)
- To remove artifacts referring to preceding versions of legislation ((such as in 3.E 'Established' Use applications which were effectively phased out from 1991), the Constitution, and correct obvious typographical errors.
- To remove text which is of no relevance to the exercise of delegated powers (such as 9.A)

- To remove duplicating references (such as the incomplete list of types of notice at the end of section 9, when action to be taken in regard to all notices is provided for at the beginning of that section).
- 3.3 To note that providing pre-application advice is a necessary function of the Council as Local Planning Authority, and was not previously recorded as having been specifically delegated to officers.
- 3.4 Part of the provisions set out in 3.B(ii) duplicate part of the matters set out within 12.D. The reference in 3.B(ii) shall therefore be modified to cross reference to part 12.D.
- 3.5 It is currently unclear whether 3.A or 3.D are intended to act as a wrap-up home for any other types of applications/consents etc. Part 3.D is titled 'Other Types of...' but states that this 'includes' and then identifies certain types of application. 3.A also refers to various applications or 'consents' and then uses the same language of 'including' when listing specific application types. An unusual or new application type of application may be claimed to be caught within either of those sections as the use of 'including' is not an exclusionary term. It is proposed to replace the 3.A 'including' reference with 'comprising' to enable certainty in regard to the application of this section, and to utilise 3.D as a wrap-up home for any other unspecified types of application/consent etc.
- 3.6 References within 3.A(v), 3.B(v) and 3.C(v) to applications submitted by or on behalf of employees (directly or indirectly) of the Council or Publica (or their partner, close relative or their partner's close relative) have been modified to better reflect section 4.3 of the Planning Protocol, which sets out that such applications 'will be reported for determination by the Committee' (with certain exceptions). The Scheme currently only requires consultation with the Ward Member in these circumstances. This is considered to not be sufficient to ensure that adequately transparent

decisions are made. The need to refer such applications to Committee excludes applications where no assessment of the merit of the development, or of the degree of impact arising from it, is required to be assessed. Other applications, such as approval of the conditions arising from planning applications, non-material amendments to them, or certificate of lawfulness applications, which only relate to the lawfulness of the development, are not proposed to be required to go to Committee. This is consistent with such applications by or on behalf of the Council, or for Members.

3.7 Upon consolidation of any changes made by Council, the layout of the table will be modified for coherency and easy review.

4. CHANGES TO THE PLANNING PROTOCOL

4.1 To modify language within the Planning protocol (hereafter, the 'Protocol') for clarity and consistency generally.

4.2 To modify the wording at 2.2 to allow for a necessarily wider consideration of current and future legislation. The Committee does not only deal with matters defined narrowly under the identified legislation.

4.3 To modify the wording at 2.3 (second paragraph) principally to highlight that not all types of application are permitted, under the Scheme of Delegation, to be referred to Committee.

4.4 To modify the wording of 2.3 (fourth paragraph) principally to identify the correct process for members to following when making a request for referral.

4.5 The Protocol deliberately (in sections 2.3 and 2.4) sets out that where the relevant Ward Member successfully refers an application to Committee, they are 'expected' to attend, but that a non-ward Member who has referred that application is 'required' to attend. The 'required' is proposed to be deleted and the duplicate



reference within section 2.4 also removed, to ensure consistency in approach and avoid duplication.

- 4.6 To modify the wording of 2.5 (fifth paragraph) and 2.12 to remove the opportunity for Ward Members to speak both before and after the Committee debate (questions and proposals) stage. This reflects the typical sequence for Planning Committees generally, and reaffirms that the Committee themselves have the final say and makes the final decision on any given application. Allowing referring members to speak after the debate may give the impression that their voice is the more relevant, and does not allow for any subsequent correction, clarification or questioning of any statements made by that Member prior to a vote occurring. As currently set out, the Protocol might also be interpreted as allowing a referring, Ward Member to speak both at the end of public speaking and after the conclusion of the debate, which may give those observing an even greater impression of the role of that Member in the work of the Committee. As is noted in paragraph 2.5 of this report, this appears to have been unintentionally reintroduced to the Constitution, having been previously removed, and the reintroduction not explained in either the accompanying reports to the Constitution Working Group, or to Full Council.
- 4.7 To reflect this modification to 2.5 (fifth paragraph) an equivalent clarification is also proposed to 2.12.
- 4.8 To modify the wording at 2.11 to reflect the potential for an additional type of vote (to 'defer') to be able to be held prior to the deadlocked committee needing to refer the application to Full Council.
- 4.9 To modify the wording at 3.2 to reflect that applications other than 'planning applications' will from time to time be determined by the Planning Committee, and

therefore the Town & Country Act, and/or the Development Plan may not always be a relevant consideration to those applications.

- 4.10 To modify the wording at 3.3 in regard to predetermination and predisposition, in order to reflect the fuller extent of guidance provided by the Local Government Association guidance, 'Probity in Planning' (2019, page 11).
- 4.11 To modify the wording at 3.4 (second paragraph) to clarify that the reference within the 3rd bullet point is only in regard to pre-application meetings that are attended by a Member.
- 4.12 To modify the wording in 3.5 in regard to lobbying that the advice is directed towards Member of the Committee specifically.
- 4.13 To modify the wording in 4.3 to be consistent with the modified references in regard to applications submitted by or on behalf of employees, as described in paragraph 3.6 of this report.

5. ALTERNATIVE OPTIONS

- 5.1 Members are advised to adopt the recommendations for the reasons outlined in the main body of the report.
- 5.2 Not amending the Constitution namely the Scheme of Delegation and Planning Protocol which would lead to a lost opportunity in terms of setting out clear decision making processes, promoting transparency and ensuring robust governance arrangements.

6. FINANCIAL IMPLICATIONS

- 6.1 None specifically arising from this report.

7. LEGAL IMPLICATIONS

7.1 Full Council, through its responsibilities as set out in the Constitution, recognises the requirement to observe specific requirements of legislation and the general responsibilities placed on the Council by public law, but also accepting responsibility to use its legal powers to the full benefit of the citizens and communities in its area.

8. RISK ASSESSMENT

8.1 There is a risk of reputational damage that if the Council does not determine planning applications in-line with the Government Targets and the potential that the Council could lose its ability to determine its own application in the worst case scenario.

9. EQUALITIES IMPACT

9.1 The Constitution is made available to all Members and the Public via the Council's website and has been updated in line with the Accessibility Requirements for Public Sector Bodies Regulations (2018). This means that it can be accessed by as many people as possible including those with impaired vision, motor difficulties or cognitive impairments. Where accessibility difficulties are encountered, the Council can provide a copy of the Constitution in different formats.

10. CLIMATE AND ECOLOGICAL EMERGENCIES IMPLICATIONS

10.1 Not applicable

11. BACKGROUND PAPERS

11.1 None.

(END)