



Council name	COTSWOLD DISTRICT COUNCIL
Name and date of Committee	COUNCIL – 24 January 2024
Subject	AMENDMENTS TO THE CONSTITUTION – REPORT OF THE CONSTITUTION WORKING GROUP
Wards affected	All
Accountable member	Councillor Juliet Layton, Cabinet Member for Planning and Regulatory Services Email: Juliet.Layton@cotswold.gov.uk
Accountable officer	Charlie Jackson, Assistant Director for Planning & Sustainability Email: Charlie.Jackson@cotswold.gov.uk
Report author	David Morren, Interim Development Manager Email: david.morren@cotswold.gov.uk
Summary/Purpose	The purpose of the report is to consider updates to the planning scheme of delegation following recommendations by the Planning Advisory Service for the benefit of all stakeholders.
Annexes	Annex A - Existing Scheme of Delegation Annex B - Proposed Planning Protocol
Recommendation(s)	That Council resolves to: <ol style="list-style-type: none">1. Approve the changes to the Scheme of Delegation in respect to the Call in of planning applications and notifications to the Planning & Licencing Committee.2. Approve the other changes to the Scheme of Delegation relating to Article 4 directions and Disposal of Planning applications.3. Approve the change in frequency of the Planning Review Panel and the associated changes to the Planning Protocol in respect to this and the required attendees.
Corporate priorities	<ul style="list-style-type: none">• Deliver the highest standard of service
Key Decision	NO



COTSWOLD
DISTRICT COUNCIL

Exempt	NO
Consultees/ Consultation	Elected Members of the Constitution Working Group on 7 th November 2023 Local Management Team; Assistant Director – Planning & Sustainability and; Interim Head of Legal Services.



1. EXECUTIVE SUMMARY

- 1.1 The report seeks to review and update the Councils Scheme of Delegation in respect to Development Management matters. The report outlines areas where the scheme is potentially outdated and suggests amendments to the scheme to give greater clarification and assist with the timeliness of decision making.
- 1.2 The report also looks at the frequency of the Review Panel and how this could be best utilised going forwards, proposing a more frequent meeting of the panel to avoid potential delay.

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 Members of the Constitution Working Group have considered a number of proposals and now recommend the following amendments to the Constitution to the Council namely the scheme of delegation.
- 2.4 This report follows advice given by the Planning Advisory Service dated May 2022 which highlighted potential issues with Cotswold District Council scheme of delegation. This report proposes changes to streamline the planning process giving applicants and stakeholders more certainty and to eradicate potential delays which could be avoided.
- 2.5 The scheme was last reviewed in July 2021 and has been utilised well. During the serving of a new Article 4 Direction (where the council seeks to limit or remove permitted development rights) it was noted that the wording was not clear and needed to be amended.

3. CHANGES TO THE SCHEME OF DELEGATION

- 3.1 The Scheme of Delegation 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. The current scheme of delegation is attached as appendix I.
- 3.2 The Planning Advisory Service report dated May 2022 noted that *"The scheme of delegation at Cotswold DC allows for Councillors to call applications in to the Planning Committee at*



the end of the process, meaning that almost inevitably those applications will not be able to be determined within the statutory time period. This is not seen as being good practice and it also unnecessarily extends the period of uncertainty for all parties involved. It is recommended that consideration be given to revising the time period for call-in to align with that for representations (i.e. 21 or 28 days from the date of notification)”.

- 3.3** By having the member referral process at the end of the planning application process this adds unnecessary uncertainty for the applicant and also the case officer, and can cause issues with negotiation as the case officer will not be certain that the changes they propose will be accepted by the elected member. This can also impact the applicant because without this certainty they may be reluctant to make said suggested changes with the hope of persuading the elected member to call the matter in.
- 3.4** With this in mind it is considered that introducing the recommended 28 day call in limit would allow for such certainty and would give all parties a clear indication of the likely direction of travel for the application.
- 3.5** It is noted that within Cotswold District Council that a great number of planning applications can have complex considerations due to the nature of the district and some will have a number of statutory consultees who do not always respond as timely as would be liked. So not to disadvantage a ward member, it is proposed to have a caveat to the 28 days which allows for an extension of this time where such consultee responses have not been received. In such an instance the expectation is that the affected ward member would request additional time to the case officer. This request would be via an email and would be within the 28 day period stipulated. The request would then be considered by the officer and agreed by either a Principal Planning officer or the Development Manager or equivalent. This would be responded back to the member in writing, ideally, no longer than 3 working days after the request is made.
- 3.6** It is also acknowledged that currently members have the ability to read the officers report before taking a view on a planning application. It is appreciated that this can sometimes be helpful to members as planning can be a complex process.. It is expected that planning officers will need to work closely with the Ward Members to clarify any issues on a site and answer any questions that will arise which will both foster closer working relationships and give officers clarity as to what issues the local Ward Member has to take into consideration should negotiation be appropriate. This would help involve members throughout the process and would enable further influence during the lifetime of the application which at present is more difficult due to the static report at the end of the process. Conversely, Ward Members would need to keep abreast of the local issues and those applications that may be causing a level of disquiet as community advocates. This is usually apparent within the 28 day period and where appropriate a conditional request could be made i.e should the member be happy that the



application is approved but would like it referred to committee if it is recommended for refusal.

- 3.7** As part of the updated call in process it is proposed that a pro-forma is created to assist members as to what information is required. The pro-forma will also give the member the ability to make a conditional request as outlined above. In such an instance should the officer be minded to refuse, the expectation would be at the earliest possible stage the matter would be referred to the appropriate mechanism to determine whether it is an appropriate candidate for hearing at committee (See Section 4). This pro-forma will be designed and shared to members before the proposed implementation of the changes.
- 3.8** It is noted that there is no mention within the Scheme of Delegation of the ability to unilaterally call a planning application into planning committee. This is something which has been done for larger or contentious applications where it was felt that it was in the wider public or corporate (Council) interest for it to be heard in this manner. It is therefore for completeness considered appropriate to add such a paragraph into the Scheme. As advised by the Constitution Working Group this will include reference to “in discussion with the Chair of Planning Committee” for completeness.
- 3.9** The suggested changes of the wording of the Scheme of Delegation are dealt with at Section 5 of this report.
- 3.10** For clarification the 28 days would begin on the date that the application was made valid by the Council.
- 3.11** Implementation of the changes should they be agreed would be for any planning applications **made valid** from the 1st April 2024.

Notifications

- 3.12** Similarly, it is noted that the Scheme of Delegation requires officers dealing with “notifications” to undertake the same procedure of potential call-ins. Most notifications relate to applications for works to trees within a conservation area. Very few of these do end up at planning committee, and the Council is only able to either raise no objection or to issue a Tree Preservation Order for such matters.
- 3.13** It is proposed that a 28 day process be introduced for such applications as the Council is time limited as to how long it has to determine such applications (6 weeks).
- 3.14** Implementation of the changes should they be agreed would be for any planning applications **made valid** from the 1st April 2024.

Article 4 Directions

- 3.15** An article 4 Direction is where the Council seeks to limit or remove permitted development rights across an area of land. The current Scheme of Delegation at para 10 states that the



Senior Officer for Planning has the ability to serve and where expedient to withdraw such directions.

- 3.16** The process however for the creation of a direction is subtly different to the wording of the Scheme and this became apparent whilst creating a recent Direction. It is therefore proposed to change the wording to include the confirmation of the order, to enable the process to be completed without undue delay.

Disposal of Planning Applications

- 3.17** The Council is able under Article 40 of the General Development Procedure Order 2015 to dispose of a planning application. This is usually where an application no longer serves a purpose going forwards and the applicant has either not provided requested information or responded to communication. Disposing of a planning application effectively closes the application down without a statutory determination having been made. This avoids the penalty of missing the statutory time-periods through no fault of the authority.
- 3.18** Legally the Council is able to dispose of applications at any time following the statutory time periods of 8 and 12 weeks where an extension of time has been agreed but it would be rare for this to be done in such a quick manner.
- 3.19** Currently the scheme of delegation at para 7 requires the Senior Officer for Planning to consult with ward members prior to this being done.
- 3.20** When undertaking a review of old planning applications on the books at Cotswold it was clear that there was a number which had not had actions undertaken on them for well over 6 months (and in some cases years) and rather than determine them (which opened the door for appeals and also would have had a deleterious impact on the Councils statutory returns) it is more advantageous to use the disposal powers.
- 3.21** Due to the nature of such applications, disposing of them after an appropriate time period is low risk, and generally not contentious. It will only be done in such circumstances that an application has not been progressed within 6 months of a Council request and thus is considered to be no longer live. It is therefore proposed that the requirement to consult with Ward Members is deleted to enable the use of this power where appropriate.

4. REVIEW PANEL

- 4.1** At present members will be aware that Cotswold District Council operates a Planning Review Panel which reviews the call in requests that is received and decides whether or not the planning reasons are strong enough for the matter to be heard by the planning committee. This has the benefit that cases are given a thorough check by both elected members and professional officers before being listed at a planning committee.
- 4.2** It is therefore logical whilst we review the scheme of delegation to review how the panel fits into the new proposed way of working. At present the panel is held monthly which can result



in significant delays for those applications and applicants to know with certainty what direction their planning application is moving in, and the primary consideration for officers is to try to reduce this time, whilst giving members a process and level of control that they are comfortable with. Therefore the suggested option which the Constitution Working Group agreed was the most appropriate with respect to operating going forwards is

- To change to a bi-weekly panel (where cases exist to take to it) – This would mean that no application waits longer than 14 days from the point of call in / officer being ready to make recommendation. It would be proposed to stream-line the panel process so that full reports are not necessary (as the planning merits are not being considered) and this would mean that they could be referred at the earliest possible opportunity. The agenda and outcome of the meeting would not be changed. It is also not considered that such a change would need any adjustment to the Constitution.

4.3 It is also proposed to amend the Planning Protocol to require either the Chair or Vice Chair of the Planning Committee to be in attendance (however both will be invited as a matter of course). It is also proposed to remove the requirement for a member of Legal Services to be in attendance but to continue to invite them as a matter of course. This will ensure that the Council is always able to hold such meetings and that the vital members are bound to attend by the terms of the meeting but the other desirable attendees will still be invited.

4.4 Should an elected member no longer require a case to go to the review panel they will via the pro-forma be able to withdraw this request via email at any time.

5. SUGGESTED OUTCOMES AND CHANGES

5.1 To replace the wording (of the Scheme of Delegation) at Para 3A (iv) with *“Should a Ward Member wish to call in an application to the Planning Committee then this must be done so in writing using the agreed form within 28 days of the receipt of the planning application. Where an application does not have all the statutory consultation responses the Ward Member may (within the initial 28 day period) request in writing an extension to this period. This will then be considered by the SOP and responded to in writing. Any extension would be expected to be within either the statutory determination date or any agreed Extension of Time with the applicant.”*

5.2 To agree to the introduction of a pro-forma for making such requests and this to be delegated to the Interim Development Manager in conjunction with the Chair of Planning Committee and the Cabinet Member for Planning and Regulatory Services.

5.3 To insert into the Scheme of Delegation at 3A Vii (or for the appropriate renumbering to take place) the following *“Applications where the Senior Officer for Planning considers (for reasons of public interest, or significant planning reasons) should be referred to the planning*



committee regardless of whether a call in request has been received in conjunction with the Chair of Planning Committee”

- 5.4 To replace the wording of Para 3B (iv) with *“Should a Ward Member wish to call in an notification to the Planning Committee then this must be done so in writing within 28 days of the receipt of the notification”*
- 5.5 To delete at Para 7 the wording *“prior consultation with Ward Member(s)”*
- 5.6 To replace at Para 10 the wording of *“To Serve Article 4 Directions”* with *“To Serve and confirm Article 4 Directions”*

6. ALTERNATIVE OPTIONS

- 6.1 Members are advised to adopt the recommendations for the reasons outlined in the main body of the report.
- 6.2 Not amending the Constitution namely the Scheme of Delegation and Planning Protocol which would lead to a lost opportunity in terms of improving agile and speedy decision making, promoting transparency and ensuring robust governance arrangements.

7. FINANCIAL IMPLICATIONS

- 7.1 None specifically arising from this report.

8. LEGAL IMPLICATIONS

- 8.1 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.

9. RISK ASSESSMENT

- 9.1 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.

10. EQUALITIES IMPACT

- 10.1 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.



COTSWOLD
DISTRICT COUNCIL

11. CLIMATE AND ECOLOGICAL EMERGENCIES IMPLICATIONS

11.1 Not applicable

12. BACKGROUND PAPERS

12.1 None.

(END)