

REFORM OF PLANNING COMMITTEES AND NATIONAL SCHEME OF DELEGATION

Head of Service:	Piero Ionta, Head of Legal and Monitoring Officer
Report Author:	Dan Clackson
Wards affected:	(All Wards)
Appendices (attached):	Appendix 1 – Updated Appendix 2.1 of the Constitution (Planning Scheme of Delegation excerpt). Appendix 2 – Updated Appendix 3 of the Constitution (Planning Committee Terms of Reference excerpt). Appendix 3 – Updated Annex 4-8 of the Operating Framework. Appendix 4 – Schedule 1 and Schedule 2 applications

Summary

Changes to the Town and Country Planning Act 1990 and the publication of Regulations made under that Act require changes to the Council's Constitution to reflect a new National Scheme of Delegation for planning applications, with a deadline of 31 October 2026 for all Councils in England to amend their Constitution to bring them in line with the new regulations.

Recommendation (s)

The Council is asked to:

- (1) Approve the proposed changes to Appendices 2.1 and 3 of the Constitution and Annex 4.8 of the Operating Framework, as set out within Appendices 1, 2 and 3 to this report, and agree that they will be implemented from 31 October 2026, following the final publication of the Government's Planning Committee Reform Regulations and Guidance.**
- (2) Appoint the Chair of the Planning Committee as this Council's Nominated Member, and appoint the Vice-Chair of the Planning Committee to deputise for them in their absence.**
- (3) Appoint the Head of Development Management and Planning Enforcement as this Council's Nominated Officer, and appoint both the Head of Planning**

Policy and Economic Development and the Planning Development Team Leader to deputise for them in their absence.

- (4) Delegate authority to the Nominated Officer, having first consulted with the Nominated Member, to determine appropriate triaging arrangements in relation to 'Schedule 2' and 'Own-Interest' planning applications.**
- (5) Delegate authority to the Monitoring Officer to make any consequential amendments, further to consulting with Chair of the Planning Committee and Standards and Constitution Committee, to Appendices 2.1 and 3 of the Constitution and Annex 4.8 of the Operating Framework.**

1 Reason for Recommendation

- 1.1 There is a requirement for Councils to update their Constitution to align with the National Scheme of Delegation by 31 October 2026 to accord with the National Scheme of Delegation of Planning Functions.

2 Background

- 2.1 The Ministry of Housing, Communities and Local Government ('MHCLG') carried out a statutory consultation on draft Regulations and guidance to implement planning committee reforms under the Planning and Infrastructure Act 2025 from 26 March 2026 to 23 April 2026. This followed an earlier consultation in 2025.
- 2.2 The government's aim behind the national scheme of delegation is to ensure that there is greater clarity and consistency about the role of planning committees in planning decision making.
- 2.3 The Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026 (The Regulations) were made on 15 July 2026 and will introduce a national scheme of delegation and a limit on Planning Committee sizes. The Government response to the consultation advises that the new regulations come into force on 31 October 2026.
- 2.4 The Regulations, specifically Regulation 4, sets out application types into Schedule 1 and Schedule 2 (set out in Appendix 4).

3 Schedule 1 and Schedule 2 Applications

- 3.1 **Schedule 1: Always to be determined by an officer**
- 3.2 Regulation 4 requires that applications listed under Schedule 1 are to be delegated to officers for determination. A copy of Schedule 1 is set out in Appendix 4 of this report.

- 3.3 **Schedule 2: Presumed to be determined by Officers, but may be referred to Planning Committee by the Nominated Member and Officer**
- 3.4 Regulation 5 provides that applications in Schedule 2 are presumed delegated unless they are formally referred to committee by the 'Gatekeepers' (see section 4 of this report). A copy of Schedule 2 is set out in Appendix 4 of this report.
- 3.5 If the authority has not made arrangements to refer, or if the referral conditions are not met, the application must be determined by an officer, unless Regulation 5 is applied.

4 Referral of Applications to Committee

- 4.1 The draft guidance sets out that referral of applications to Planning Committee should be due to exceptional circumstances, and not a standard practice.
- 4.2 It introduces a 'Gatekeeper' model - the Gatekeepers are as follows:
- The Nominated Officer (expected to be the Chief Planning Officer or equivalent, with potential for substitutes in their absence) and
 - the Nominated Member (expected to be the Planning Committee Chair or equivalent, with potential for substitutes)
- 4.3 It is recommended that the Nominated Officer should be the Head of Development Management and Planning Enforcement. The Nominated Member should be the Chair of the Planning Committee and in their absence the Vice Chair of the Planning Committee.
- 4.4 A Schedule 2 application will only be referred to Planning Committee where both Gatekeepers agree that the application should be referred. If they cannot agree, it must be delegated to Officers for determination.
- 4.5 Under Regulation 5(3), a Schedule 2 application can only be considered for referral where at least one statutory criterion is met:
- a) It raises a significant planning matter having regard to the development plan and other material considerations; or
 - b) It raises an economic, social or environmental issue of significance to the local area.
- 4.6 There is no definition of what constitutes 'significant' as it depends on the local area. It may include, for instance, outline planning permission for a large allocated residential development or changes to a notable listed building.

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- 4.7 The guidance does not require that the Gatekeepers consider all Schedule 2 applications, and it also anticipates Local Planning Authorities ('LPAs') setting up triage arrangements if referral volumes become high, to avoid delays.
- 4.8 There is also an expectation in the Guidance for LPAs to keep a record of the cases considered by the Nominated Officer and Member for referral, the outcome of their consideration and reasons for their decision. This should be reported to the Planning Committee on a regular basis and made available on the Council's website. It is recommended that the Planning Committee receive and review on a quarterly basis the record of the cases the nominated officer and nominated member have considered for referral to committee. This would occur in the same manner that planning, enforcement and appeal performance is currently reported.
- 4.9 The procedures for referring applications to the Nominated Officer and Nominated Member would be at the Council's discretion and this would be one of the only aspects that Members could make specific to Epsom & Ewell.
- 4.10 Under Regulation 6, the guidance suggests that for applications on behalf of the Local Authority, Member or Officers, it may be appropriate for some applications to be referred to Planning Committee even if they do not raise any significant planning, economic, social or environmental issues. The regulations make clear that such applications do not need to meet the same criteria for Gatekeepers to assess in terms of raising significant planning issues.
- 4.11 Where Planning Functions are not listed in Schedule 1 or 2 it is for the LPA to decide whether it should be delegated or referred as part of its local constitution.
- 4.12 The Nominated Officer – on the basis of recommendation four above being passed – will, in due course, produce a 'scheme of management' to set out administrative arrangements to support operation of the new Scheme of Delegation.
- 4.13 The likely overall effect of the Regulations is to reduce the number of planning applications referred to the Planning Committee. The changes therefore impact members and officers and will reduce the instances of residents attending Planning Committee to make verbal representations on applications of interest to them
- 4.14 The call in in process currently afforded to ward members is required to be dispensed with.

5 Timescales for changes to Constitution

- 5.1 There is a requirement for Councils to update their Constitution to align with the National Scheme of Delegation by 31 October 2026. Officers recommend agreement to the necessary changes to the Constitution as seen within the Appendices to this report, as well as delegation to the Monitoring Officer to make any changes as necessary following implementation of these changes. The risk of significant changes is considered to be minimal.

6 Risk Assessment

Legal or other duties

6.1 Equality Impact Assessment

- 6.1.1 None for the purposes of this report.

6.2 Crime & Disorder

- 6.2.1 None for the purposes of this report.

6.3 Safeguarding

- 6.3.1 None for the purposes of this report.

6.4 Dependencies

- 6.4.1 None for the purposes of this report.

6.5 Other

- 6.5.1 The Planning profession is concerned about the shift of responsibilities from committee to officers brought about by the national scheme of delegation. The Planning Officers' Society is recommending that councils put in place additional guidance to prevent inappropriate lobbying of officers and members, and for dealing with vexatious complaints. This report recommends that the Council adopts measures to try to protect officers and members from unreasonable and unacceptable behaviour when carrying out their duties. Additional text has therefore been incorporated into Annex 4-8. The Head of Development Management and Planning Enforcement will keep this under review and whether any further steps (e.g. a new procedure for dealing with vexatious customers) are required to protect officers.

6.5.2 A full impact assessment of the effect on the costs of business, the voluntary sector and the public sector at a national level was undertaken in relation to the amendments to the Act. This has been published at www.legislation.gov.uk/uksi/2026/854/impacts , together with an explanatory memorandum: www.legislation.gov.uk/uksi/2026/854/memorandum/contents

7 Financial Implications

- 7.1 There are no material financial implications arising directly from this report.
- 7.2 **Section 24 considerations:** The decisions to be taken under this report do not fall within the scope of the LGR section 24 Direction, as they are neither contractual nor land/property matters. As such, the Council can take the decisions proposed above
- 7.3 **Section 151 Officer's comments:** There are no direct financial implications but members should note there may be some officer resource requirements associated with the new governance and record-keeping arrangements. These are expected to be managed within existing budgets.

8 Legal Implications

- 8.1 The changes are mandatory and this Council needs to be ready to discharge its planning functions in accordance with the national scheme by 31 October 2026. To not do so will expose the Council to the risk of judicial review by anyone aggrieved by a decision made otherwise than in accordance with the national scheme.
- 8.2 Local authorities will need to amend the constitutions to align with the national scheme of delegation. Failure to do so may make decisions on whether to delegate applications to officers or refer them to committees for determination liable to judicial review.
- 8.3 **Legal Officer's comments:** Amendments to the Town and Country Planning Act and the introduction of regulations under S319ZZC of that Act, mandate changes to the Council's scheme of delegation as regards planning functions.
- 8.4 The Council must, after 31 October 2026, operate its scheme of delegation to reflect the requirements of these changes. Failure to do this will mean the Council is acting unlawfully and may expose some planning decisions to challenge by way of judicial review or complaint to the Local Government Ombudsman.
- 8.5 The recommendations in this report are intended to support compliance with the changes to the Act and the Regulations, including the necessary amendments to the Constitution and associated governance processes.

9 Policies, Plans & Partnerships

9.1 **Council's Key Priorities:** The following Key Priorities are engaged:

- Effective Council

9.2 **Service Plans:** The matter is not included within the current Service Delivery Plan.

9.3 **Climate & Environmental Impact of recommendations:** None for the purposes of this report.

9.4 **Sustainability Policy & Community Safety Implications:** None for the purposes of this report.

9.5 **Partnerships:** None for the purposes of this report.

9.6 **Local Government Reorganisation Implications:** The changes to the Constitution for Epsom & Ewell will only apply until 31 March 2027. East Surrey will need to adopt its own Constitution in line with the National Scheme of Delegation. Officers will be liaising with other East Surrey boroughs to establish what changes they are proposing to their Constitutions to ensure consistency. The Planning Advisory Service have also indicated that they are working with MHCLG to draft template wording for Councils to include in their Constitution relating to the regulations.

10 Background papers

10.1 The documents referred to in compiling this report are as follows:

Previous reports:

- None

Other papers:

- None