

CABINET

25 SEPTEMBER 2026

REPORT OF THE CORPORATE FINANCE & GOVERNANCE PORTFOLIO HOLDER

A.1 AMENDMENTS TO THE COUNCIL'S CONSTITUTION – Planning Committees and the National Scheme of Delegation of Planning Authority Functions

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

This report asks Cabinet to approve the recommended changes to the Constitution for referral onto Full Council following a fundamental review undertaken by Officers of the delegated powers relating to planning matters following the introduction of the Government's new National Scheme of Delegation of Planning Functions and associated legislation.

The main proposals cover miscellaneous amendments to the Scheme of Delegated Powers (Part 3) and the Codes and Protocols (Part 6) to ensure the Council's Constitution remains effective, efficient and consistent at an operational level and complies with the new legislation.

EXECUTIVE SUMMARY

The Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026 ("the 2026 Regulations"), which will come into force on 31st October 2026, relate to the national scheme of delegation of planning functions and the size of planning committees. These Regulations require relevant local planning authorities ("LPAs") in England (as defined by section 319ZZF(1) of the Town and Country Planning Act ("TCPA 1990")) to make arrangements for specified planning functions to be discharged by committees (including sub-committees) or by officers.

In making and operating arrangements under these Regulations, section 319ZZE(4) and (5) of TCPA 1990 requires LPAs to have regard to any relevant guidance issued by the Secretary of State. Such (draft) guidance was issued by the Ministry for Housing, Communities & Local Government on 1st June 2026, and along with the 2026 Regulations, have been taken into account in producing the proposals contained within this report and its appendices.

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. Committees should focus on the key proposals that matter to an area, enabling other, often more minor and technical, decisions to be made by planning officers"*.

The 2026 Regulations set out types of applications where decisions:

- must be delegated to officers in all cases as set out in Schedule 1; and
- are presumed to be delegated to officers unless:
 - they meet at least one of the criteria in regulation 5(2); or
 - the application is made by or on behalf of a local authority, a member or officer of that local authority or an entity owned or controlled by the authority or any of its members or officers (regulation 6); and
 - the nominated officer and nominated member of the planning committee agree the application should be referred to a planning committee for determination.

Where a planning function is not listed in either Schedule 1 or 2, it is for the LPA to decide

whether it should be delegated to an officer or referred to a committee for a decision, for this reason a local protocol complying with the legal framework should be adopted.

Part 3 of the Council's Constitution provides the Responsibility of Functions - Scheme of Delegated Powers, with the determination of planning applications being contained within Schedule 2 – non-executive functions. Currently, all planning (including all prior approval applications), enforcement, building control and conservation matters are delegated to the Corporate Director (Planning & Community) **except** in relation to the determination of certain planning applications as detailed within Part 3.15-3.18, for determination by the Committee. The changes required to comply with the legislation are set out in Appendix A.

Under the national scheme of delegation, current practices set out in local authority constitutions must be reviewed to ensure compliance with the legislation and the most fundamental change for this Council will be removal of the power for Ward councillors to require cases to be referred to for committee consideration, as this will no longer be possible. Local authorities will need to amend their constitutions to align with the national scheme of delegation and further information is contained within the Protocol, as set out in Appendix B.

RECOMMENDATION

That Cabinet –

- (a) notes the contents of the report and the impact of the Government's National Scheme of Delegation of Planning Functions and the requirements to amend the Council's Constitution to ensure compliance with the new legislation coming into force with effect from 31st October 2026; and**
- (b) formally RECOMMENDS TO COUNCIL that:**
 - (i) Part 3 (Scheme of Delegated Powers – Planning Committee) of the Council's Constitution be amended to reflect the proposed changes, as set out in Appendix A attached hereto this report;**
 - (ii) Part 6 (Codes and Protocols) of the Council's Constitution be amended to incorporate the new "Protocol for the Discharge of Local Planning Authority Functions", as set out in Appendix B attached hereto this report, together with the consequential deletion of the Members' Referral Scheme for Planning Applications;**
 - (iii) these changes come into effect on 31st October 2026; and**
 - (iv) authority to amend the Protocol, as set out in Appendix B, be delegated to the Corporate Director (Planning and Community), in consultation with the Chairman of the Planning Committee and the Monitoring Officer, to reflect any minor alterations considered necessary through the implementation of the new national scheme and best practice.**

REASON(S) FOR THE RECOMMENDATION(S)

Having considered the fundamental review undertaken by Officers of the delegated powers relating to planning matters to comply with the new legislation implementing the new national scheme of delegation, and the recommended changes to the Constitution arising therefrom, and to enable those recommendations to be submitted to the Full Council for formal approval and adoption.

ALTERNATIVE OPTIONS CONSIDERED

Given that the 2026 Regulations impose mandatory requirements on relevant LPAs in England (including Tendring District Council) there has been limited scope for alternative approaches to be taken in putting these proposals together.

Some flexibility exists around determining, pursuant to Regulation 5 of the 2026 Regulations and Schedule 2 to those 2026 Regulations, whether any such Schedule 2 application made to the local planning authority is formally referred by the “nominated member” and the “nominated officer” to the Planning Committee for determination or to be determined by Officers. Similar flexibility exists around any “own interest” application made to the local planning authority pursuant to Regulation 6.

That flexibility was taken into account in formulating the new “Protocol for the Discharge of Local Planning Authority Functions”, as set out in Appendix B, and consequently some scope exists for a different approach or approaches to have been taken. In exercising flexibility, the review and proposed approach must be consistent with the Government’s policy, legislation and the statutory guidance.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

Agreeing the proposed changes will ensure that the Council demonstrates good governance and operates efficiently in pursuit of its priorities, whilst complying with current legislation.

OUTCOME OF CONSULTATION AND ENGAGEMENT

The Chairman of the Planning Committee was consulted on the Protocol.

The subject matter was discussed at an All Members’ Briefing held on 16 September 2026.

LEGAL REQUIREMENTS (including legislation & constitutional powers)

Is the recommendation a Key Decision (see the criteria stated here)	YES/NO	If Yes, indicate which by which criteria it is a Key Decision	☐ Significant effect on two or more wards ☐ Involves £100,000 expenditure/income ☐ Is otherwise significant for the service budget
		And when was the proposed decision published in the Notice of forthcoming decisions for the Council (must be 28 days at the latest prior to the meeting date)	Not Applicable in this instance

X	The Monitoring Officer confirms they have been made aware of the above and any additional comments from them are below:
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Constitution

Article 15 of the Council’s Constitution provides that changes to the Constitution are approved by Full Council after receiving a recommendation from Cabinet following consideration of a proposal from the Monitoring Officer and a recommendation via the Portfolio Holder with

responsibility for corporate governance. Article 15 also provides authority to the Monitoring Officer to make minor changes to the Constitution arising from changes to the organisational structure of the Council.

Article 12 of the Constitution provides that the Council's Monitoring Officer will ensure the Constitution is up to date. This function takes into account legislative requirements and best practice.

In accordance with Section 37 of the Local Government Act 2000, as amended, a local authority, operating executive arrangements, must prepare and keep up to date a document which contains a copy of the authority's standing orders for the time being and such other information as the authority considers appropriate.

Schedule 1 to the Local Authorities (Functions and Responsibilities) Regulations 2000, as amended, sets out functions which must not be the responsibility of the Executive and therefore rests with Council or its committees. The power to make amendments to the standing orders and the Constitution rests with full Council.

All comments within the Monitoring Officer's responsibility are picked up throughout the content of the report, where the principles around Officers exercising delegated powers is being emphasised. This is also to reflect the requirements of the revised Best Value Statutory Guidance issued in May 2024.

Town and Country Planning Act 1990

Local planning authorities in England are required to implement the provisions in sections 319ZZC to 319ZZF of the Town and Country Planning Act 1990 (introduced through section 54 of the Planning and Infrastructure Act 2025 and the Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026). These sections relate to the national scheme of delegation of planning functions and the size of planning committees.

LPAs in England are defined by section 319ZZF(1) of the Town and Country Planning Act 1990. Sections 319ZZC to 319ZZE of the Town and Country Planning Act 1990 apply to all local planning authorities with certain exceptions (for the avoidance of any doubt, district councils are not excluded).

The Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026

Through these Regulations the Secretary of State has exercised their power under Section 319ZZC of the Town and Country Planning Act 1990 to set out which functions of a local planning authority should be delegated to planning officers for a decision and which should instead go to a planning committee or sub-committee.

These Regulations set out the following general approach to decision making:

- where applications fall under Schedule 1, decisions must be delegated to officers under regulation 4;
- where applications fall under Schedule 2, there is a presumption under regulation 5 that decisions are delegated to officers unless the nominated officer and nominated member agree the application should be referred to a planning committee or sub-committee for determination and that it meets at least one of the criteria in regulation 5(3);
- there is further specific provision under regulation 6 for own-interest applications i.e. an application made (whether or not jointly with any other person) by the authority or an

officer or member of the authority or an application where the authority or any of its members or officers has an interest, to support transparency and propriety. These applications can be referred to a planning committee or sub-committee for determination if the nominated officer and nominated member of the planning committee agree; and

- where a planning function is not listed in either Schedule 1 or 2, it is for the local planning authority to decide whether it should be delegated to an officer or referred to a committee or sub-committee for a decision (as part of its local constitution).

MHCLG Guidance – “Planning Committees and the National Scheme of Delegation of Planning Functions: Guidance for local planning authorities in England”

As required by section 319ZZE(4) and (5) of the Town and Country Planning Act 1990, local planning authorities must have regard to this guidance in operating or making arrangements required under the Regulations.

The Guidance makes clear that where local planning authorities do not comply with the Regulations from the date they come into force (31 October 2026) and their planning committees make decisions on applications which must be delegated to Officers, those decisions may be subject to judicial review by anyone aggrieved by the decision. This may lead to the quashing of the decision.

Member Involvement

The regulations remove the ability for individual councillors to automatically require committee determination. However, as part of triage arrangements, Members may (only) request a Schedule 2 application to be discussed by the Nominated Member and the Nominated Officer to ensure applications of potential significant impact are considered further. Any such request needs to be aligned to the consultation period to ensure review meetings between the Nominated Member and the Nominated Officer can take place without affecting required application timeframes and any refund risk.

Significant

The nominated officer and nominated member when considering a potential committee item must determine this based on the two tests only (except for own interest when these tests do not need to apply). In the tests, reference to ‘significant’ is made and this is defined as:-

(1) The Guidance (at paragraph 23) advises that what is “significant” varies and depends on the local area. As examples, the Guidance provides the following:

- An application for outline planning permission for a large multi-phase residential development allocated in the local plan;
- An application for planning permission for change of use of a community shop in a rural area;
- An application for planning permission or listed building consent for changes to a notable listed building in a town centre.

(2) The Guidance (at paragraph 24) provides two examples where this criterion is unlikely to apply, namely:

- The application for development aligns with a detailed site allocation and relevant local or national policies, including the National Planning Policy Framework. However, it is added that significant planning issues may arise from new material considerations introduced by the application.
- If a statutory consultee initially raised a concern about a specific planning matter

(e.g., highways or flood risk), but the development proposal has since been modified to address this. It is added in the end, however, that the above will not apply if the nominated officer has compelling reasons to consider otherwise.

In addition, the Guidance states that, under the national scheme of delegation, current practices set out in local authority constitutions, such as the power for Ward councillors to require cases to be called in for committee consideration or having trigger points for referral to committee if a certain number of objections is reached, will not be possible. Local authorities will need to amend their 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. For Tendring District Council this means that the "Members' Referral Scheme for Planning Applications" will no longer be lawful and therefore it will be inoperable.

FINANCE AND OTHER RESOURCE IMPLICATIONS

Risk

Complying with current legislation and providing clarity through clear and consistent schemes of delegation and codes and protocols contained within the Constitution prevents confusion and different interpretation and enhances the Council's overall governance arrangements. However, it is anticipated that initially there is a risk of increased legal challenges by way of judicial review applications on the exercise of increased delegated powers, where interested parties are not satisfied with the outcome, calling into question how such decisions have been made. This risk will be mitigated by officers ensuring their decisions are robust, fully recorded with reasons set out justifying the matters considered.

Resources

As the new arrangements are required to ensure compliance with new legislation implementing the Government's policy of a National Scheme of Delegation for Planning Functions, it is anticipated that, whilst the number of applications being presented to the Planning Committee will reduce, the nominated officer and nominated member roles will have additional review and engagement responsibilities.

The review undertaken by officers has taken into account best practice and guidance provided by national planning resources. There is a view that the nominated officer should be the Chief Planning Officer for the local planning authority, which at Tendring District Council would be the Corporate Director (Planning and Community), who has oversight of all planning functions including Policy and the Garden Community. The rationale for proposing the nominating officer would be the Head of Planning and Building Control comes down to the officer structure, as the Head of Service has more direct oversight of planning decisions and operational matters.

A review on the impact of the role of the Planning Committee membership will need to be factored into the Members' Allowance Scheme, which will be reviewed in readiness for the new shadow unitary authority in 2027.

X	The Section 151 Officer confirms they have been made aware of the above and any additional comments from them are below:
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There are no further comments over and above those set out elsewhere within the report.

USE OF RESOURCES AND VALUE FOR MONEY

The following are submitted in respect of the indicated use of resources and value for money indicators:	
A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	Best value authorities must demonstrate good governance, including a positive organisational culture, across all their functions and effective risk management.
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	The Constitution sets out the Council's standing orders and associated scheme of delegation, policies and procedures for decision making.
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	Governance is a theme of the Best Value Duty and is described (amongst other things) as ensuring decision-making processes, within clear schemes of delegation, should be transparent, regularly reviewed, clearly followed and understood, enabling decision-makers to be held to account effectively. There should also be evidence of the decisions following good public law decision making principles (reasonableness, rationality, proportionality, legality, fairness etc).
MILESTONES AND DELIVERY	
Submission of Corporate Finance & Governance Portfolio Holder's recommendations to formal Cabinet meeting – 25 September 2025.	
Submission of Cabinet's recommendations to Full Council for approval and adoption – 13 October 2026.	
Implementation of approved changes to the Constitution – from 31 st October 2026.	
ASSOCIATED RISKS AND MITIGATION	
Not implementing the amendments to the Constitution will negatively impact the Council's governance arrangements and will also mean that the Council will not be operating in accordance with legislation thereby leaving planning application decisions open to judicial review by anyone aggrieved by the decision(s). This may lead to the quashing of that decision(s).	
EQUALITY IMPLICATIONS	
The purpose of the Constitution is to:	
1 Provide key elements of the Council's overall governance arrangements; 2 Enable decisions to be taken efficiently and effectively; 3 Create an effective means of holding decision-makers to public account; 4 Enable the Council to provide clear leadership to the community, working in partnership with the local community, businesses and other organisations for the long term well-being of the District; 5 Support the involvement of the local community in the process of local authority decision making; 6 Ensure that no one will review, or scrutinise, a decision in which they were directly involved; 7 Help Councillors represent their residents more effectively; 8 Ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for their decisions; and	

9 Provide the framework and structure in which cost effective quality services to the community are delivered.	
SOCIAL VALUE CONSIDERATIONS	
There are no such considerations associated with this report.	
IMPLICATIONS RELATED TO DEVOLUTION AND/OR LOCAL GOVERNMENT REORGANISATION	
On 7th September 2026, the Secretary of State for Housing, Communities and Local Government announced in Parliament that a review of the Local Government Reorganisation programme was commencing and that the decision made in March 2026 for Greater Essex (and other areas) had been withdrawn in the light of new legal advice. Following this announcement, local authorities received correspondence from the Minister of Housing, Communities and Local Government requesting that until this review has concluded, Councils cease work on implementing the decisions that have previously been announced. The timetable for completion of the review is unknown at this time. This proposal is not impacted by MHCLG's request, as it to enable the Council to comply with the new legislation implementing the new national scheme of delegation, through the recommended changes to the Constitution arising therefrom, and to enable those recommendations to be submitted to the Full Council for formal approval and adoption, in accordance with the Council's Constitutional requirements.	
IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030	
There are no direct implications.	
OTHER RELEVANT CONSIDERATIONS OR IMPLICATIONS	
Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.	
Crime and Disorder	None
Health Inequalities	None
Area or Ward affected	None directly. Though the 2026 Regulations (and consequent amendments to the Council's Constitution) will apply to planning applications submitted in any and all Wards of the District.

PART 3 – SUPPORTING INFORMATION

BACKGROUND
The Government's stated 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. The Government feels that planning committees should focus on the key proposals that matter to an area, enabling other, often more minor and technical, decisions to be made by planning officers. Section 319ZZC of the Town and Country Planning Act 1990 gives the Secretary of State the power to set out which functions of a local planning authority should be delegated to planning officers for a decision and which should instead go to a planning committee or sub-committee. The Secretary of State has exercised this power through the 2026 Regulations. These Regulations set out the following general approach to decision making:

Regulation 4 provides that the function of determining an application of a kind listed in Schedule 1 must be delegated to an officer, unless—

- the application is also of a kind listed in Schedule 2 (for example, a minor residential application which the LPA considers is connected with an application for listed building consent), in which case regulation 5 applies, or
- the application is made by the LPA itself, or a member or officer of the LPA, or the LPA otherwise has an interest in the application (an “own-interest application”), in which case regulation 6 applies.

Regulation 5 provides that the member and officer nominated by the LPA under regulation 3 may refer the function of determining an application of a kind listed in Schedule 2 to a committee, if they agree that the application raises an issue of economic, social or environmental significance to the local area, or raises a significant planning matter. Any such application not referred to a committee must be delegated to an officer. Regulation 5 does not apply to an own-interest application; regulation 6 applies instead.

Regulation 6 provides that the function of determining an own-interest application may be referred to a committee by agreement of the LPA’s nominated member and nominated officer, at their discretion. Any such application not referred to a committee must be delegated to an officer.

Regulation 7 provides that any committee determining an application pursuant to these Regulations may have a maximum of 13 members.

Regulation 8 provides that the Secretary of State must undertake a statutory review of these Regulations and publish it by 31st October 2028.

In making and operating arrangements under these Regulations, section 319ZZE(4) and (5) of TCPA 1990 requires LPAs to have regard to any relevant guidance issued by the Secretary of State. Regulations 5(4) and 6(5) require nominated members and nominated officers to have regard to any such guidance when considering whether to refer an application to a committee. That statutory guidance was duly published on 1st June 2026.

That guidance confirms that, under the national scheme of delegation, current practices set out in local authority constitutions, such as the power for Ward councillors to require cases to be called in for committee consideration will not be possible. Local authorities, such as this Council, will need to amend their 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.

Consideration for referral to committee

For the purposes of considering referral of applications to committee the guidance states that:

- a. the nominated officer should be the Chief Planning Officer or equivalent officer who has extensive professional planning experience. However, local planning authorities will also need to ensure they have other senior planning officers who can provide cover if needed to avoid any unnecessary delays in the referral process (or where there is an own interest application and the Chief Planning Officer or equivalent officer has an interest it).
- b. the nominated member should be the chairman of the planning committee or, where such a role does not exist, the vice chairman or equivalent member. As in the case of nominated officers, the authority will need to ensure there are arrangements in place for other members to cover should the nominated member not be available (or where there is an own interest

application and the nominated member has an interest in it).

It is for individual local planning authorities to put in place their own arrangements for how the consideration of cases for referral to committee will operate in practice. Those arrangements have been duly considered by the Corporate Director (Law and Governance) & Monitoring Officer, the Corporate Director (Planning and Community), the Head of Planning and Building Control, the Head of Planning Business and Policy, the Democratic Services Manager and the Planning Solicitor in formulating the proposals contained in Appendices A and B to this report. In addition, to the foregoing, those considerations also took into account the following matters.

It is not a requirement of the national scheme of delegation that nominated officers and nominated members consider all Schedule 2 applications or all own-interest applications for potential referral to committee. LPAs may, through their constitutions, decide which Schedule 2 or own-interest applications need to be considered for referral. The regulations provide for the option for Schedule 2 applications to be considered for committee against the gateway test but do not require all schedule 2 applications to be considered – they will otherwise be delegated to officers.

Where LPAs anticipate that there may be a significant number of Schedule 2 or own-interest applications which may need to be considered for referral to committee they may wish to put in place a triage system to ensure that the nominated officer and nominated member of the committee are not overwhelmed and to avoid any unnecessary delays in planning decision making.

It is imperative to note that, whilst nominated officers and nominated members should make every effort to reach agreement on which applications should be referred to committee, where such agreement is not possible, the application must be determined by officers in accordance with regulation 5(2) or regulation 6(3).

Criteria which must be met before a case can be considered for referral under regulation 5

Regulation 5 and the guidance state that, in determining whether a referral under regulation 5 is made, the presumption should be that decisions are delegated to officers and only exceptionally be referred to committee. At a minimum, at least one of the following statutory criteria must be met for a referral to committee to be considered to meet that threshold:

“A. where the application raises an economic, social or environmental issue of significance to the local area

B. where the application raises a significant planning matter having regard to the development plan and any other material considerations”

Applications for development which do not raise a significant planning matter can only be referred to the committee under criterion A if they raise a significant economic, social or environmental issue for the local area. It is for the nominated officer and member to assess whether the development proposal raises any such issue, providing an opportunity for local democratic oversight where necessary. What constitutes ‘significant’ will vary depending on the local area, but examples could include:

- an application for outline planning permission for a large multi-phase residential development allocated in the local plan
- an application for planning permission for change of use of a community shop in a rural area
- an application for planning permission or listed building consent for changes to a notable listed building in a town centre

For the purpose of criterion B, the following circumstances are considered by Government to be unlikely to raise a significant planning matter:

- where the application for development broadly complies with a detailed site allocation and other relevant policies set out in a local or neighbourhood plan and national decision making policies set out in the National Planning Policy Framework. Significant planning matters may arise if new material considerations are raised by the application
- where a specific planning matter (e.g. highways or flood risk) was initially raised by a statutory consultee as a concern, but the development proposal has been modified to make it acceptable in the view of the statutory consultee (unless the nominated officer has compelling reasons to consider otherwise)

Own-interest applications

Applications which are made (whether or not jointly with any other person) by the authority or an officer or member of the authority or it is an application where, in the view of the nominated officer and nominated member, the authority or any of its members or officers has an interest, are own-interest applications dealt with under regulation 6. The Government has recognised that there may be cases where, in the interests of transparency and public accountability, it may be appropriate for some such applications whether they are in Schedule 1 or Schedule 2 to be referred to a planning committee or sub-committee. Where the nominated officer and nominated member agree, they can be referred to the committee without the need for consideration of the criteria set out in regulation 5(3). Where no such referral has been made, they must be determined by an officer.

Members are reminded that, under regulation 10 of the Town and Country Planning General Regulations 1992, where a local planning authority is determining its own application for planning permission, it must not be determined by a committee, sub-committee or officer responsible for the management of the building or land to which the application relates. In addition to this restriction, where a planning application is made by a nominated officer or nominated member of the authority or they have an interest in it, in the interests of propriety, they should not be involved in the decision on whether to refer it to committee or not.

Treatment of reserved matters applications

The Government recognises that outline planning permission can be granted for largescale multi-phase development which can take place over many years. As such each related reserved matters application can represent substantial development in its own right and cover more issues of substance, for example, the provision of onsite community infrastructure, which may, in exceptional circumstances, merit committee scrutiny. For this reason, the Government has distinguished between those reserved matters approval applications which relate to large outline planning permissions and those which do not, with the former being placed in Schedule 2 and the latter in Schedule 1.

For the purpose of the 2026 Regulations a large outline planning permission is an outline planning permission which grants permission for development involving the provision of at least 500 dwellings or a building or buildings where the floorspace to be created by the development is 50,000 square metres or more. A reserved matters application for such development must meet the criteria set out under regulation 5(3) for a committee to consider it.

When considering reserved matters approval applications which fall into Schedule 2 against the criteria in regulation 5(3), nominated officers and nominated members are cautioned that they should only have regard to matters which are directly relevant to the reserved matters

application before them.

Treatment of section 106 decisions

Specific provision has not been made for section 106 agreements themselves in the regulations. This is because, most of the time, appropriate section 106 planning obligations will be considered as part of the application process. In other cases, they can be entered into unilaterally by the landowner so there is no real 'function' for the local planning authority. The Government recognises that there may occasionally be section 106 planning obligations which are agreed outside of the context of a planning application, but they consider that, in these cases, the decision on whether it should be delegated to officers or referred to committee should be left to the discretion of the local authority.

The guidance states that, where a local planning authority considers a section 106 agreement is connected to an application falling into either Schedule 1 or Schedule 2, and agreement is being sought to amend or discharge the planning obligation (under section 106A(1)(a) of the Town and Country Planning Act 1990), the function of agreeing to amend or discharge the obligation should fall into the same schedule as the related application. This same approach applies to applications to modify or discharge an obligation under section 106A(3).

Treatment of 'special control' applications

Applications for listed building consent, advertisement consent and consent under tree preservation orders are included in Schedule 2. In most cases, the Government believes that these types of application will not raise issues which would merit committee scrutiny. The presumption, therefore, is that decisions on such matters should be delegated to officers and only exceptionally referred to committee.

Whether such an application meets the criteria in regulation 5(3) will depend on the particular circumstances but an example could include where there are proposals for a change of use and works to a prominent listed building which makes an important contribution to a town centre.

Transparency and reporting

The guidance states that, as a minimum, the local planning authority should keep a record of the cases the nominated officer and nominated member have considered for referral to committee, the outcome of their consideration and the reasons for their decision. They should report this to the planning committee on a regular basis and make it available on the Council's website.

Size of committees

Regulation 7 provides for the number of members on a planning committee or sub-committee to be no more than 13. This is a maximum figure to accommodate local planning authorities where Members are from multiple political parties. The Guidance states that local planning authorities should consider whether a smaller number of members would be more appropriate in their area to support effective decision making. Cabinet will be aware that this Council's Planning Committee is made up of nine Members and therefore it has not been felt necessary to consider making any change.

PREVIOUS RELEVANT DECISIONS

None

BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

Link to the Town and Country Planning Act 1990 can be found here: [Town and Country Planning Act 1990](#)

Link to the Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026 can be found here: [The Town and Country Planning \(Discharge of Local Planning Authority Functions\) \(England\) Regulations 2026](#)

Link to the MHCLG Guidance – “Planning Committees and the National Scheme of Delegation of Planning Functions: Guidance for local planning authorities in England” can be found here:

[Planning Committees and the National Scheme of Delegation of Planning Functions: Guidance for local planning authorities in England - GOV.UK](#)

APPENDICES

Appendix A = Amended Part 3 of the Constitution (Scheme of Delegated Powers – Planning Committee)

Appendix B = New “Protocol for the Discharge of Local Planning Authority Functions” (Addition to Part 6 of the Constitution - Codes and Protocols)

REPORT CONTACT OFFICER(S)

Names	(1) Ian Ford (2) Lisa Hastings
Job Titles	(1) Democratic Services Manager (2) Corporate Director (Law and Governance) & Monitoring Officer
Email/Telephone	iford@tendringdc.gov.uk (01255) 686 584 lhastings@tendringdc.gov.uk

A.1 APPENDIX A

DRAFT AMENDED PLANNING COMMITTEE FUNCTIONS, TERMS OF REFERENCE AND DELEGATED FUNCTIONS

Committee	Terms of Reference	Delegated Functions (Committee)	Delegated Functions (Officers)
Planning Committee	The discharge of the Town and Country Planning and Conservation functions as specified in Schedule 1 to the Local Authorities (Functions and Responsibilities (England) Regulations 2000 (as amended) and as detailed in Appendix 1 to Part 3 of the Constitution. The discharge of the Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026 (No. 854) ["the 2026 Regulations"], requiring a local scheme of delegation in the context of the National Scheme of Delegation for planning authority functions. Any additional authorised roles and functions as may be set out within this Constitution or approved by a decision of Full Council.	1. Pursuant to Regulation 5 of the 2026 Regulations and Schedule 2 to those 2026 Regulations, any such Schedule 2 application made to the local planning authority that is formally referred to the Planning Committee by the "nominated member" and the "nominated officer" will be determined by the Planning Committee. In making that referral, the nominated member and the nominated officer must have regard to any relevant guidance issued by the Secretary of State under section 319ZZE (4) of the Town and Country Planning Act 1990, together with the Council's "Protocol for the Discharge of Local Planning Authority Functions", as set out within Part 6 of the Constitution.	1. Pursuant to Regulation 4 of the 2026 Regulations and Schedule 1 to those 2026 Regulations, any such Schedule 1 application made to the local planning authority will be determined by the Corporate Director (Planning and Community) (acting as the Council's Chief Planning Officer) or another designated Officer authorised by them in accordance with paragraphs 11 & 12 within Schedule 2 (Responsibility for Council (Non-Executive) Functions) to Part 3 of the Constitution. 2. Pursuant to Regulation 5 of the 2026 Regulations and Schedule 2 to those 2026 Regulations, any such Schedule 2 application made to the local planning authority that is <u>not formally referred to the Planning Committee</u> by the "nominated member" and the "nominated officer" will be

A.1 APPENDIX A

		2. Pursuant to Regulation 6 of the 2026 Regulations any “own interest” application made to the local planning authority that is formally referred to the Planning Committee by the “nominated member” and the “nominated officer” will be determined by the Planning Committee. In making that referral, the nominated member and the nominated officer must have regard to any relevant guidance issued by the Secretary of State under section 319ZZE (4) of the Town and Country Planning Act 1990, together with the Council’s “Protocol for the Discharge of Local Planning Authority Functions”, as set out within Part 6 of the Constitution. <u>NOTE</u>: Regulation 3 of the 2026 Regulations states that a relevant local planning authority may nominate a member of the authority to act as the nominated member for the purposes of regulations 5 and 6 and an officer of the authority to act as the nominated officer for the	determined by the Corporate Director (Planning and Community) or another designated Officer authorised by them in accordance with paragraphs 11 and 12 within Schedule 2 (Responsibility for Council (Non-Executive) Functions) to Part 3 of the Constitution. In making that referral, the nominated member and the nominated officer must have regard to any relevant guidance issued by the Secretary of State under section 319ZZE (4) of the Town and Country Planning Act 1990, together with the Council’s “Protocol for the Discharge of Local Planning Authority Functions”, as set out within Part 6 of the Constitution. 3. Pursuant to Regulation 6 of the 2026 Regulations any “own interest” application made to the local planning authority that is <u>not formally referred to the Planning Committee</u> by the “nominated member” and the “nominated officer” will be determined by the Corporate Director (Planning and
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		purposes of regulations 5 and 6. In addition, the local planning authority may provide for substitute nominated members or nominated officers. For Tendring District Council, the nominated member is the Chairman of the Planning Committee, and the substitute nominated member is the Vice-Chairman of the Planning Committee. The nominated officer is the Head of Planning and Building Control and the substitute nominated officers are the Planning Managers.	Community) or another designated Officer authorised by them in accordance with paragraphs 11 and 12 within Schedule 2 (Responsibility for Council (Non-Executive) Functions) to Part 3 of the Constitution. In making that referral, the nominated member and the nominated officer must have regard to any relevant guidance issued by the Secretary of State under section 319ZZE (4) of the Town and Country Planning Act 1990, together with the Council's "Protocol for the Discharge of Local Planning Authority Functions", as set out within Part 6 of the Constitution. <u>NOTE:</u> Regulation 3 of the 2026 Regulations states that a relevant local planning authority may nominate a member of the authority to act as the nominated member for the purposes of regulations 5 and 6 and an officer of the authority to act as the nominated officer for the purposes of regulations 5 and 6. In addition, the local planning
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			authority may provide for substitute nominated members or nominated officers. For Tendring District Council, the nominated member is the Chairman of the Planning Committee, and the substitute nominated member is the Vice-Chairman of the Planning Committee. The nominated officer is the Head of Planning and Building Control and the substitute nominated officers are the Planning Managers.
			4. Where a planning function is not listed in either Schedule 1 or 2 of the 2026 Regulations, such functions will be carried out by the Corporate Director (Planning and Community) or another designated Officer authorised by them in accordance with paragraphs 11 and 12 within Schedule 2 (Responsibility for Council (Non-Executive) Functions) to Part 3 of the Constitution.
			5. The Head of Planning and Building Control, in consultation with the Chairman of the Planning Committee, may extend the time for the completion of a Section 106

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			Legal Agreement for two further periods of six months (at which point it would need to return to the Committee for its decision either to further extend the time or instead to now refuse planning permission on the grounds that the Section 106 Agreement had not been completed).
			6. The Head of Planning and Building Control is authorised to approve and / or enter into a Section 106 Legal Agreement with landowners for the establishment of Habitat Banks and is further authorised to make any associated decisions around enforcement against non-compliance.
	The discharge of the miscellaneous functions (Part I) relating to public rights of way, within the District Council's responsibility as specified in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) and as detailed in Appendix 1 to Part 3 of the Constitution.		All public rights of way matters are delegated to the Corporate Director (Operations and Delivery) or another designated Officer authorised by them in accordance with paragraphs 11 and 12 within Schedule 2 (Responsibility for Council (Non-Executive) Functions) to Part 3 of the Constitution.
	The discharge of the miscellaneous functions (Part II) relating to hedgerows, trees and hedges as specified in Schedule 1 to the Local		Hedgerows, trees and hedges matters are delegated to the Corporate Director (Planning and Community) or another designated

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	Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) and as detailed in Appendix 1 to Part 3 of the Constitution.		Officer authorised by them in accordance with paragraphs 11 and 12 within Schedule 2 (Responsibility for Council (Non-Executive) Functions) to Part 3 of the Constitution. <u>NOTE:</u> Applications made under regulation 16 (1) of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 (application for consent under tree preservation order) fall under Schedule 2 of the 2026 Regulations and may therefore be determined by either the Planning Committee or by an officer.
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A.1 Appendix B Protocol for the Discharge of Local Planning Authority Functions

Implementation of the Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026 ('the 2026 Regulations')

Introduction

The Authority must significantly amend its Scheme of Delegation, Planning Committee procedures and Constitution by 31 October 2026 to comply with the Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026.

The Government has issued guidance on implementing sections 319ZZC-319ZZF of the Town and Country Planning Act 1990, introduced by the Planning and Infrastructure Act 2025. These provisions establish a national scheme of delegation and limit the role and size of planning committees. Authorities are required by section 319ZZE to have regard to this guidance.

The 2026 Regulations reverse the current approach by making officer determination the default for almost all planning functions, with committee referral permitted only in limited circumstances. Existing local arrangements, including ward member call-in powers and other referral triggers that do not comply with the Regulations, will no longer be lawful.

Applications are divided into Schedule 1 and Schedule 2 categories. Schedule 1 applications must be determined by officers and can only be referred to committee if linked to a Schedule 2 application or if they qualify as an "own-interest" application under Regulation 6.

An "own-interest" application includes applications made by, or on behalf of, the authority, its members or officers, or where the authority, member or officer is considered to have an interest in the proposal.

Schedule 2 applications, including own-interest applications, must also be determined by officers unless both the nominated member and nominated officer agree that referral to committee is justified on the statutory grounds. The Regulations create a strong presumption in favour of officer delegation, with committee determination reserved for exceptional cases.

Schedule 1 applications

These are summarised as being:-

- Householder application
- Minor residential (1–9 dwellings, <0.5ha, etc.)
- Minor commercial
- Certificates of lawfulness (existing or proposed)
- Listed building certificates of lawfulness of proposed works

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- Permission in principle
- Non-material amendments (s96A)
- Condition discharge / Article 27 approvals
- Prior approvals / GPDO determinations
- Reserved matters (if non-large outline, eg <500 dwellings, floorspace <50000sqm)
- Biodiversity gain plans
- S106 modification/discharge connected to a Schedule 1 application
- Certificates of appropriate alternative development (apps S17 of the Land Compensation Act 1961)
- Section 73(1) variations where the original planning permission was one that falls within Schedule 1

Note – Some Schedule 1 applications will fall under Schedule 2 under certain circumstances.

Schedule 2 applications

These are summarised as being:-

- Listed building consent, including variation or discharge of condition in association with the consent.
- Applications if considered connected to listed building consent (Defined by TDC as any planning application is submitted with or within 3 years of a LB application that includes any overlapping/similar or the same development elements or demolition to enable).
- Planning applications not classed as: Householder, Minor residential (1–9 dwellings, <0.5ha, etc.) or Minor commercial
- Section 73 (non-Schedule 1 cases)
- Retrospective applications (s73A – And includes all Sch1/2 cases)
- Advertisement consent
- Tree Preservation Order consent
- Reserved matters for large outlines (eg 500+ dwellings, floorspace 50000sqm+)
- S106 modification/discharge connected to a Schedule 2 application

Note - Where a planning function is not listed in either Schedule 1 or 2 (i.e. applications expressly covered by the 2026 Regulations), it is for the local planning authority to decide whether it should be delegated to an officer or referred to a committee or sub-committee for a decision (as part of its local constitution) (see para 7 of the guidance).

1. Objectives of the New Arrangements

The Council should adopt arrangements that:

1. Comply fully with the Regulations.
2. Provide a clear and auditable referral process.
3. Avoid inconsistent decision-making.
4. Minimise unnecessary workload for Planning Committee Chairs.
5. Provide transparency for members, applicants and the public.

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6. Ensure decisions withstand legal challenge and scrutiny.

2. Proposed Governance Structure

Nominated Member

The Council formally appoints:

- Planning Committee Chairman as Nominated Member.
- Vice Chairman as Substitute Nominated Member.

The appointment should be incorporated into the Constitution and Scheme of Delegation.

Nominated Officer

The Council formally appoints:

- Head of Planning and Building Control as Nominated Officer.
- Planning Managers as Substitute Nominated Officers.

The appointment should be incorporated into the Constitution and Scheme of Delegation.

This satisfies Regulation 3 requirements and ensures continuity where either party is unavailable.

3. Recommended Referral Model

Recommended Option – Triage System

The greatest risk identified in the working paper is requiring the Nominated Member and Nominated Officer to discuss every Schedule 2 application individually.

A triage system is therefore recommended.

Stage 1 – Officer Screening

Validation Officer identifies:

- A) Schedule 1 application must be delegated
- B) Schedule 1 application with own interest
- C) Schedule 2 application
- D) Schedule 2 application with own interest

A.1 Appendix B Protocol for the Discharge of Local Planning Authority Functions

- E) Schedule 1 application that in the view of the nominated member and the nominated officer may have authority/officer/member own interest in the application.

Note - Schedule 1 applications that i) are connected to a LBC application; and/or ii) are a s73A application follow the C) Schedule 2 pathway.

And inputs status as part of the Uniform record.

- All applications for A shall be delegated.
- All applications for B, D and E shall not be subject to triage and automatically require a referral to the nominated member and the nominated officer.
- For all C applications, they shall be subject to the triage process.

Case officer allocated as part of desk top assessment shall check identification. This becomes a mandatory section in every delegated/committee report. The officer shall conduct the triage of the application as needed as part of the desk top assessment and review at the end of public consultation.

Note: Case officer will record on the file prior to issue if the application is subject to any referral decision and reason by the nominated officer and nominated member.

Responsible officer	Application/status identified	Action required
Validation Officer	A) Schedule 1 application	Must be delegated.
Validation Officer	B) Schedule 1 application with own interest	Not subject to triage. Automatically referred to the Nominated Member and Nominated Officer.
Validation Officer	C) Schedule 2 application	Subject to the triage process.
Validation Officer	D) Schedule 2 application with own interest	Not subject to triage. Automatically referred to the Nominated Member and Nominated Officer.
Case Officer	E) Schedule 1 application that, in the view of the Nominated Member and Nominated Officer, may have authority, officer or member own interest in the application	Not subject to triage. Automatically referred to the Nominated Member and Nominated Officer.

Stage 2 – Automatic Referral Assessment - Triage

A.1 Appendix B Protocol for the Discharge of Local Planning Authority Functions

All Schedule 2 applications that require triage are considered to be delegated by default as they do not raise issues of economic, social or environmental significance to the local area and do not raise significant planning matters having regard to the development plan and material considerations **unless** any of the following applies and a full consideration by the nominated officer and nominated member for referral on these matters are required:-

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Category	Trigger / criterion	Referral effect
Major Development	100+ dwellings.	Requires full referral assessment.
Major Development	5,000sqm+ commercial floorspace.	Requires full referral assessment.
Sensitive Applications	Listed building consent for Grade I Listed Buildings and/or Schedule Monuments	Requires full referral assessment.
Sensitive Applications	Development affecting Grade I buildings and/or Schedule Monuments and/or within National Landscape designated areas.	Requires full referral assessment.
Sensitive Applications	Removal of net space community and/or sport facilities if a departure to Local Plan Policy.	Requires full referral assessment.
Other Applications	Receipt of any Ward Member representation seeking Nominated Officer and councillor review that provides significant planning matters and issues of economic, social or environmental significance received within 28 days of validation.	Requires full referral assessment. This request is only available for Schedule 2 applications.
Other Applications	Any Schedule 2 applications that any Planning Officer select at any time for review that provides significant planning matters and issues of economic, social or environmental significance.	Requires full referral assessment. This request is only available for Schedule 2 applications.
Own-Interest Applications	All own-interest cases (For avoidance of doubt) These cases can be referred to the committee without the need for consideration of the criteria set out in regulation 5(2). Where no such referral has been made, they will be determined by an officer.'	Automatically referred to the Nominated Member and Nominated Officer for agreement on if they go to committee (but own interest applications do not need to be subject to the tests).

A.1 Appendix B Protocol for the Discharge of Local Planning Authority Functions

Stage 3 – Referral Assessment

For all applications directly referred or referred through Triage, the case officer shall list these for consideration. This shall be via a Teams spreadsheet (Could form part of the centralised Referral Register) for the Nominated Officer and Nominated Member to review and record any decision from a meeting organised to discuss.

The case officer shall record, the application ref, address and proposal and status (stage1).

For each case the nominated member and officer shall record:-

Test 1

Does the proposal raise issues of economic, social or environmental significance to the local area?

Test 2

Does it raise significant planning matters having regard to the development plan and material considerations?

Own Interest

If own interest is confirmed. While tests are not required for own interest, it may be useful to consider these as good practice.

And records the outcome.

Outcome A – Both Agree Delegated

Outcome B – Both Agree Referral To Committee Required

Outcome C – Disagreement

The nature of disagreement is recorded. Where there is disagreement, the application remains delegated and the matter reported to the Director of Planning and Community.

Stage 4 – Decision Recording

A central Referral Register shall be maintained for referrals and details of the referral and/or status also placed within the officer report for the application. This shall be reported to Planning Committee annually.

A.1 Appendix B Protocol for the Discharge of Local Planning Authority Functions

The central register shall record for items referred to the Nominated officer and member only and the following information:

- Application reference.
- Application type.
- Description and Address
- Schedule category.
- Own-interest status.
- Referral considered?
- Referral outcome.
- Reasoning.
- Decision route.
- Nominated member.
- Nominated officer.

This responds directly to the Secretary of State guidance requirement to keep formal referral records.

The guidance provides that as a minimum, the local planning authority should keep a record of the cases the nominated officer and nominated member have considered for referral to committee, the outcome of their consideration and the reasons for their decision. They should report this to the planning committee on a regular basis and make it available on their website.

Further Notes Regarding National Delegation.

Note on Member Involvement

The regulations remove the ability for individual councillors to automatically require committee determination. However, as part of triage Members may request a Schedule 2 applications only to be discussed by the Nominated Member and Officer to ensure applications of potential significant impact are considered further. Any such request needs to align with the consultation period to ensure review meetings between the Nominated member and Nominated officer can take place without affecting required application timeframes and any refund risk.

Note on “Significant”

The nominated officer and member when considering a potential committee item must determine this based on the two tests only (except for own interest when these tests do not need to apply). In the tests reference to significant is made and this is defined as:-

- (1) The Guidance (at paragraph 23) advises that what is “significant” varies and depends on the local area. As examples, the Guidance provides the following:

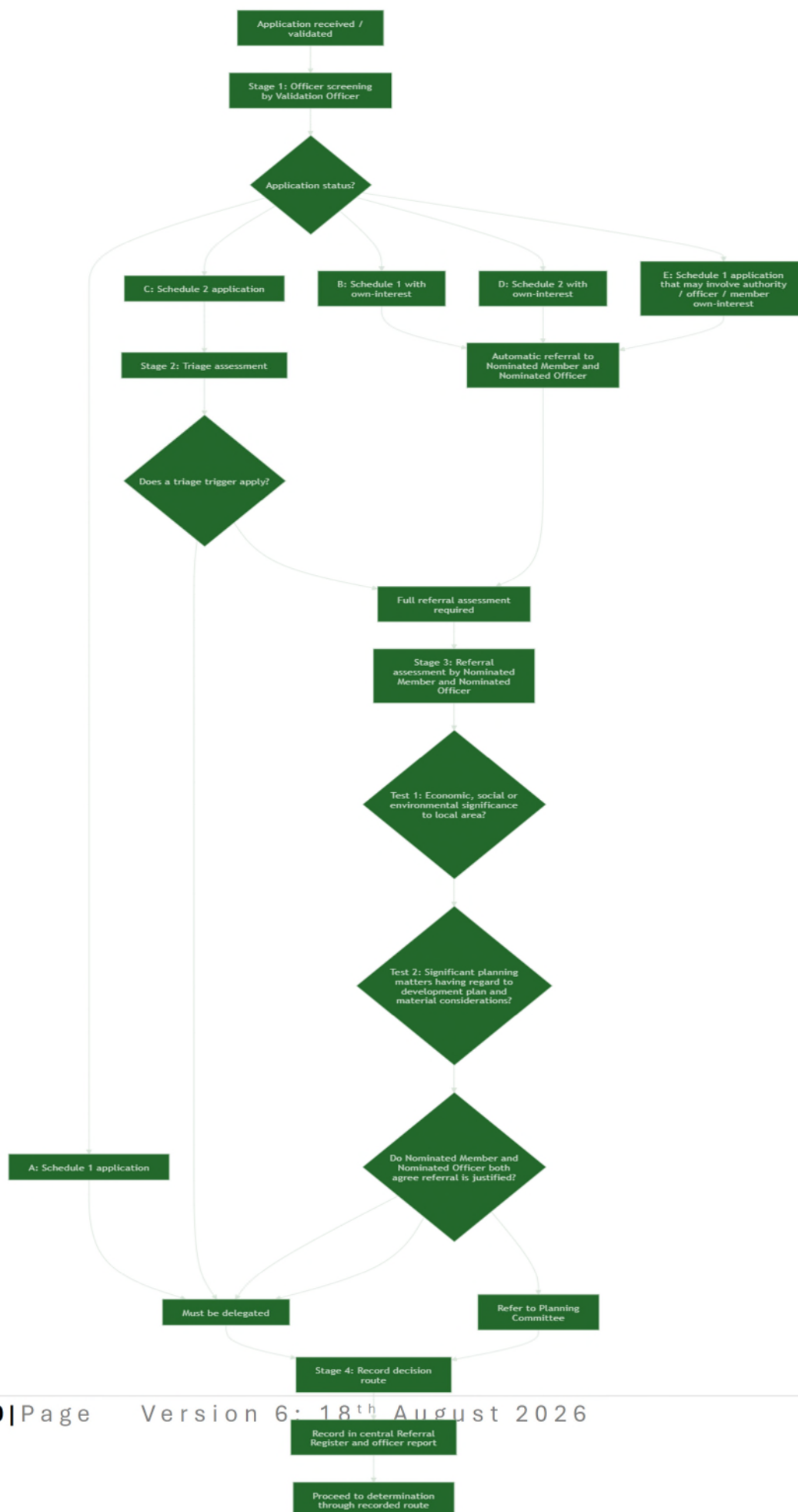
A.1 Appendix B Protocol for the Discharge of Local Planning Authority Functions

- An application for outline planning permission for a large multi-phase residential development allocated in the local plan;
- An application for planning permission for change of use of a community shop in a rural area;
- An application for planning permission or listed building consent for changes to a notable listed building in a town centre.

(2) The Guidance (at paragraph 24) provides two examples where this criterion is unlikely to apply, namely:

- The application for development aligns with a detailed site allocation and relevant local or national policies, including the National Planning Policy Framework. However, it is added that significant planning issues may arise from new material considerations introduced by the application.
- If a statutory consultee initially raised a concern about a specific planning matter (e.g., highways or flood risk), but the development proposal has since been modified to address this. It is added in the end, however, that the above won't apply if the nominated officer has compelling reasons to consider otherwise.

A.1 Appendix B Protocol for the Discharge of Local Planning Authority Functions



A.1 Appendix B Protocol for the Discharge of Local Planning Authority Functions

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Letter to the Nominated Officer and Nominated Member

Date: Wednesday, 16 September 2026

(Please note this should be within 28 days of validation of the application)

Dear Nominated Officer and Member,

**REQUEST FOR DISCUSSION ON SCHEDULE TWO APPLICATION: PLANNING
REF: ...INSERT**

I am the Ward Councillor for **INSERT WARD** and in representing the community request the above-mentioned schedule two only application is referred to the Nominated Officer and Member to consider if the application raises one of the following matters:-

- 1) The proposal raises issues of economic, social or environmental significance to the local area?
- 2) The proposal will raise significant planning matters having regard to the development plan and material considerations?

I declare that

- The planning application **is located/is not located** within the Ward to which I am elected.
- **I am/not** a current serving member of the Planning Committee.

The referral is because I consider the application raises issues under 1 or 2 above as detailed below.

Please ensure that I am notified of the date of the committee meeting for this application, if the nominated officer and member agree this is a committee item, so that I am able to speak on the item.

Yours Faithfully

Councillor INSERT