

Council

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National Scheme of Delegation for Planning Applications

Report from: Adam Bryan, Director of Place
Bhupinder Gill, Assistant Director Legal and Governance

Author: Dave Harris, Chief Planning Officer
Jo Horne, Senior Solicitor Planning
Wayne Hemingway, Head of Democratic Services

Summary

This report sets out proposed changes to the Council's Constitution linked to a new national scheme of delegation following introduction of planning regulations which will come into effect on 31 October 2026.

The report was considered by the Planning Committee on 23 September 2026 and its comments are set out in section 5 of the report.

1. Recommendations

- 1.1. The Council is asked to note the comments of the Planning Committee as set out in section 5 of the report.
- 1.2. The Council is asked to agree the changes to the Planning Committee's terms of reference as set out in Appendix 3 to the report with effect from 31 October 2026.
- 1.3. The Council is asked to agree the changes to the Employee Delegation Scheme as set out in Appendix 4 to the report with effect from 31 October 2026.
- 1.4. The Council is asked to agree the changes to the Planning Code of Good Practice as set out in Appendix 5 to the report with effect from 31 October 2026.
- 1.5. The Council is asked to agree that the size of the Planning Committee be changed from 15 Councillors to 13 Councillors as set out in paragraph 3.3 of the report with effect from 31 October 2026.
- 1.6. The Council is asked to agree the following persons to act as Nominated Member and Nominated Officer as set out in section 3 of The Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026:

- (i) Nominated Member – Chairperson of the Planning Committee or the Vice-Chairperson of the Planning Committee in their absence;
- (ii) Nominated Officer – Chief Planning Officer or the Service Manager – Development Management in their absence.

2. Budget and policy framework

- 2.1. Changes to the Council's Constitution are a matter for full Council.

3. Background

- 3.1. Members will be aware of the forthcoming changes to how local planning authorities (LPAs) in England, such as Medway Council, will be required to consider and determine planning applications. In summary, The Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026 sets out the requirement for the Council to make arrangements for specified planning functions to be discharged by committees (including sub-committees) or by officers. A copy of these regulations is set out in Appendix 1 to the report. The Government issued statutory guidance in relation to these forthcoming changes in June 2026, a copy of which is set out in Appendix 2 to the report.
- 3.2. The Planning Committee were advised of these forthcoming changes initially on 12 March 2025 and more recently in the performance reports to Committee on 6 May 2026 and 29 July 2026 following the Planning and Infrastructure Act 2025 receiving Royal Assent in December 2025. The Planning Committee was also provided with all of the proposed changes at its meeting on 23 September, please refer to section 5 of this report for further details.
- 3.3. The national scheme of delegation within the 2026 Regulations specifies that some planning application types must be considered and determined by officers and that some planning application types may be determined by the Planning Committee subject to a "gateway test". In addition, the 2026 Regulations requires the size of the Planning Committee to comprise no more than 13 Councillors (the Planning Committee currently consists of 15 Councillors).
- 3.4. Under these new arrangements, most applications will be classified as either schedule 1 or schedule 2 applications. The categories are formally set out in schedules 1 and 2 to The Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026 (Appendix 1 to the report). For ease of reference, they are summarised below.
- 3.5. Schedule 1 applications **must*** be delegated to officers for determination and include the following:
 - Householder applications
 - Minor commercial development

- Minor residential (under 10 houses and smaller than 0,5 ha)
- S73(1) applications – applications to develop land without compliance with conditions for a schedule 1 development
- Reserved matters applications unless a large phased development of over 500 homes or 50,000sqm floorspace building(s)
- Discharge of conditions
- Prior approval (pd applications)
- Permission in principle applications
- S106 modifications to schedule 1 applications
- Non material changes to permissions
- Certificates of lawfulness applications
- Biodiversity net gain plans
- Certificate of appropriate alternative development.

3.6. Schedule 2 applications are set out below:

- All other planning applications i.e. major commercial and major residential (not being reserved matters)
- S73(1) non-compliance with conditions on schedule 2 development
- Schedule 1 applications if linked to listed building
- Applications where development already carried out (S73A(1))
- Reserved Matters applications for large outline applications (over 500 dwellings etc – see above)
- S106 modifications to schedule 2 development under S106A(1)a and S106A(3)
- Listed building applications
- Variation and discharge of conditions on Listed Building applications
- Advert applications
- Tree Preservation Order applications
- S73A applications.

3.7. There is a presumption that schedule 2 applications will be delegated to officers to determine and will only be considered for referral to the Planning Committee for determination where:

- a) The application raises an economic, social or environmental issue of **significance** in the local area and/or;
- b) The application raises a **significant planning matter** having regard to the development plan and other material considerations;
- c) Or it is triggered by Regulation 6 being an own interest application (an application made by Medway Council, Medway Councillors or officers, or where Medway Council, Medway Councillors or officers have an interest in). *Please note that this particular regulation applies to **both** schedule 1 and schedule 2 applications.

3.8. In the case of the first a) and b) above, the Chief Planning Officer and Chairperson of the Planning Committee, in their capacities as the Nominated

Officer and Nominated Member, will consider whether or not any schedule 2 application be referred to the Planning Committee for determination. This will be known as the Gateway Test. In the case of where the Chief Planning Officer and Chairperson are unable to agree, the case will be referred to Planning Officers for determination.

- 3.9. Sections 23 and 24 of the Statutory Guidance provides some context around what does or does not constitute **significant** in relation to a) and b).
- 3.10. In the case of c), noting this applies to both schedule 1 and schedule 2 applications, it will be for the Chief Planning Officer and Chairperson to decide if referral is needed. For instance, Medway's current practice of any application submitted by an officer involved in any way with the planning process, the application should be referred to the Planning Committee for determination. It is recommended that this practice continue. In terms of a Council application, it is recommended that they should be considered on a case by case based on grounds a) and b).
- 3.11. In the absence of the Chief Planning Officer and/or the Chairperson, the Service Manager – Development Management and/or the Vice-Chairperson of the Planning Committee shall be authorised to act.
- 3.12. The Council will keep a record of the cases where the Chief Planning Officer and the Chairperson of the Planning Committee (or their substitutes in their absence) have considered for referral to the Planning Committee, the outcome of their consideration and the reasons for their decision. These will be reported to the Planning Committee for information on a regular basis as well as publishing the outcomes on the Council's website.
- 3.13. The statutory guidance states: "...For the avoidance of doubt, 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 [to] delegated officers, those decisions may be subject to judicial review by anyone aggrieved by the decision. This may lead to the quashing of the decision."

4. Options

- 4.1. Option 1 – to make the necessary changes to the Council's Constitution to ensure compliance with the Government regulations. This is the recommended option.
- 4.2. Option 2 – to maintain the current arrangements for the consideration and determination of planning applications. This is not recommended as this will lead to a significant risk of legal challenge to the Council acting as the Local Planning Authority, in determining planning applications not in accordance with the Government regulations.

5. Planning Committee – 23 September 2026

- 5.1. **Discussion:** The Chief Planning Officer presented the report which set out proposed changes to the Council's Constitution linked to the new national scheme of delegation following introduction of planning regulations which would come into effect on 31 October 2026. The Committee was being asked to comment on proposed recommendations being submitted to full Council on 15 October 2026.
- 5.2. Members discussed the proposals which were generally supported from a governance perspective, noting that the changes provided an opportunity to focus on creating a more sustainable future. It was stressed that if more decisions were delegated, it was vital that the Planning Policy Framework remained up to date and sufficiently ambitious. The importance of sustainability within the planning process was highlighted, particularly in relation to major developments and biodiversity. Members supported the recommendations but encouraged the Council to accelerate and continue its work on: Climate action; Biodiversity; Sustainable transport; and High-quality placemaking, emphasising that this would help secure the best long-term outcomes for Medway communities.
- 5.3. Alternative views expressed were that it was minimising local democracy, pointing out the significant impact smaller developments could have on local residents, and raising concerns about not having any influence regarding reserved matters applications and Section 106 agreements. It was suggested that difficulties faced by developers were linked to high interest rates and it was questioned whether there were alternative ways to stimulate economic growth rather than reducing committee involvement.
- 5.4. In response to questions, the Chief Planning Officer confirmed that when decisions were taken whether or not any Schedule 2 application be referred to the Planning Committee for determination, this would be formally recorded and reported to the Planning Committee for information on a regular basis as well as publishing the outcomes on the Council's website. If agreement was not reached between the Chief Planning Officer and Chairperson, then the legislation was clear that it would be determined under delegated powers. This was why it was being proposed that his deputy, Service Manager - Development Management and the Vice Chairperson also be involved in the decisions.
- 5.5. It was confirmed that the October meeting of the Committee would be the last with 15 Members as it was before the legislation came into effect on 31 October 2026. After that the Committee membership would be reduced to 13. This had been raised and discussed with group whips.
- 5.6. **Decision:** The Committee noted the proposed recommendations being submitted to full Council on 15 October 2026 and referred to their comments above.

6. Advice and analysis

6.1. The Government's regulations on this matter form part of a wider suite of changes to the planning system as part of the Planning and Infrastructure Act 2025. The Act forms a central part of the Government's strategy to boost economic growth, deliver 1.5m homes and fast track infrastructure projects. The act aims to reduce delays and costs in the planning process, making infrastructure and housing projects more attractive to developers and investors while supporting clean energy initiatives. The key objectives of the Act are:

- Faster and more certain consenting for critical infrastructure (Nationally Significant Infrastructure Projects approvals)
- Enhanced infrastructure delivery (prioritise clean energy projects)
- Strategic approach to nature recovery (Nature restoration fund)
- Streamlined planning process (National scheme of delegation)
- Investor confidence and efficiency (reducing procedural bottlenecks).

6.2. It is recommended that the Council approves the changes on the basis that the Government regulations must be complied with. This will enable there to be a more consistent approach to the consideration and determination of planning applications in England, which is to be welcomed overall.

6.3. With regards to ensuring that Council's arrangements comply with the legislation, the following sections have been reviewed and updated to ensure they remain fit for purpose, this includes a general review to ensure that references to legislation remain relevant:

6.3.1. Planning Committee terms of reference, as set out in Appendix 3 to the report;

6.3.2. Employee scheme of delegation - in respect of planning functions. This includes setting out details of schedule 1 and schedule 2 applications and the Gateway Test, as set out in Appendix 4 to the report;

6.3.3. Planning Code of Good Practice, as set out in Appendix 5 to the report.

6.3. Planning Committee members raised a number of views as set out in section 5 of the report. As indicated in the report, the Council is required to make these changes to comply with legislation, however, it is recognised that Members will have differing views on the Government's approach to this.

6.4. In conclusion, Councillors will no longer have the ability to request an application to be referred to the Planning Committee. In addition, the number of representations made in respect of planning applications will not have a direct impact on whether an application should be referred to the Planning Committee. Therefore, this is likely to reduce the overall number of

applications referred to the Planning Committee for consideration and determination.

7. Risk management

- 7.1. Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.

Risk	Description	Action to avoid or mitigate risk	Risk rating
Risk of judicial review	Planning application decisions are challenged in the courts owing to non-compliance with new Government regulations	Full Council agrees the necessary changes to the Constitution to comply with the new Government regulations	C3
Lack of awareness around the changes	Members, applicants, local residents and other stakeholders are unaware or unclear of the changes to how the Council determines planning applications	Advise Members of the changes in advance of the 31 October deadline and undertake appropriate communications with stakeholders to raise awareness	C3

Likelihood	Impact:
A Very likely B Likely C Unlikely D Rare	1 Critical 2 Major 3 Moderate 4 Minor

8. Consultation

- 8.1. The Planning Committee has been kept updated of the forthcoming changes as indicated in section 3 of the report.

9. Climate change implications

- 9.1. [The Council declared a climate change emergency in April 2019](#) - item 1038D refers, and has set a target for Medway to become carbon neutral by 2050.
- 9.2. There are no direct climate change implications arising from this report. There is the possibility of a reduction in meetings if the recommended changes lead

to a reduction of the number of applications requiring determination by the Planning Committee. This would lead to a reduction in journeys to and from meetings which may have a positive impact around reduced fuel consumption, air quality and congestion.

10. Local Government Reorganisation (LGR) implications

- 10.1. Following the announcement of the pause on the 7 September 2026, officers will monitor the ongoing situation and will consider any relevant impacts as they arise.

11. Financial implications

- 11.1. There are no direct financial implications arising from this report. As referenced elsewhere in this report, should the Council decide not to comply with the new Government regulations, this may lead to the quashing of decisions and any associated costs in defending any such decisions.

12. Legal implications

- 12.1. The new Government Regulations make changes as to which planning applications must or may be determined by officers, and which are for determination by the Planning Committee.
- 12.2. Statutory guidance has been issued which supports the Regulations, giving further detail as to how they should be complied with. As the changes come into force on 31 October 2026, the Council's Constitution needs to be revised to reflect the requirements of the Regulations and guidance.

Lead officer contact

Dave Harris, Chief Planning Officer, dave.harris@medway.gov.uk
Wayne Hemingway, Head of Democratic Services,
wayne.hemingway@medway.gov.uk

Appendices

Appendix 1 – The Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026
Appendix 2 – Planning Committees and the National Scheme of Delegation of Planning Functions: Guidance for local planning authorities in England
Appendix 3 – Planning Committee Terms of Reference
Appendix 4 – Employee Scheme of Delegation (Extract)
Appendix 5 – Planning Code of Good Practice

Background papers

[Planning Officers Society – Good Practice Guidance Note – National Scheme of Delegation](#)