



Report to Planning Committee 14 March 2024

Director Lead: Matt Lamb, Planning & Growth

Lead Officer: Lisa Hughes, Business Manager – Planning Development, x5565

Report Summary	
Report Title	Planning Constitution Review
Purpose of Report	<p>The report provides:</p> <ul style="list-style-type: none"> (a) a review of the Planning Committee Scheme of Delegation to Officers with suggested amendments (b) a review of public speaking for Planning Committee (c) a review of the Protocol for Members on Dealing with Planning Matters
Recommendations	<p>It is recommended that approval is given to:</p> <ul style="list-style-type: none"> (a) the amended Scheme of Delegation to Officers; (b) changes to the Protocol on Planning Committee (including its title) to facilitate public speaking arrangements, clarification in relation to late representations and other minor amendments on the 8th April 2024 (c) the amendments to the Scheme of Delegation to Officers come into effect on the 8th April 2024 (d) that the changes in the Protocol for Planning Committee relating to public speaking come into effect for Planning Committee meeting to be held on 9th May 2024 (e) the suggested amendments to the ‘Newark & Sherwood Local Development Framework, Statement of Community Involvement’ in relation to public speaking are noted. A report will be presented to Cabinet seeking approval prior to consultation. (f) A review of public speaking is undertaken after 6-months of operation.

1.0 **Background**

1.1 The Council's Constitution (Part C) – Responsibility of Functions requires C17, 13:

“To adopt a scheme of delegation to Officers, including the ability for District Councillors to reserve matters to Committee in circumstances prescribed by the scheme; the scheme to be reviewed as necessary and at least annually...”

The [‘Planning Committee Scheme of Delegation to Officers’](#) was last reviewed in August 2022.

1.2 Additionally, in order to facilitate the ability for Planning Committee to consider wider public participation, a report was presented to Full Council on 13th February. This report detailed that (Part B) sets out the Council's arrangements for public participation. Changes to this and other parts of the Constitution were agreed at Full Council to facilitate the ability for Planning Committee to consider public speaking. A new section was inserted into Part B ‘Section 4 entitled ‘Planning Committee’ stating ‘*The Planning Committee’s Protocol for Dealing with Planning Matters sets out who is entitled to speak at meetings of the Committee*’.

1.3 Parts C and D were also agreed to be amended. Part C has inserted an additional section ‘*...and may include provision for public speaking*’, whilst Part D has a new Section added (6.8) entitled ‘Public Speaking, stating ‘*Planning Committee may make arrangements for public speaking in its Protocol for Dealing with Planning Matters*’.

1.4 As part of this review and the wider functioning of Planning Committee, consideration has also been given to other areas including:

- a) Public speaking and
- b) Presentation of late representations to Planning Committee Members.

1.5 This report sets out the consideration to each of these elements as well as consequential changes that would be required should approval be given to any or all of these matters.

Scheme of Delegation

1.6 The Scheme of Delegation, when adopted under the new Governance arrangements, had some quite significant changes. This included the provision of the 5-day referral process. This applies to **any application** (except those specifically excluded due to time constraints) to Ward members when the recommendation of Officers is different to the response from the Town/Parish Council. Prior to this, the referral related only to approvals **and** when the proposal related to between 1 and 9 dwellings.

1.7 Reviewing Planning Committee meetings since this change in procedure was introduced and up to February 2024's meeting, this has resulted in 40 applications being referred, which would otherwise have been dealt with under delegated authority. Of these, 10 received a decision contrary to Officer recommendation. The breakdown is provided below. Only those meetings with referrals are shown.

Month	No. on Agenda	Number Referred	Number - Decision Contrary to Recommendation
2022			
July	3	2	None

December	6	3	None
2023			
February	12	3	1 – application refused
March	11	5	None
April	15	5	1 – application approved
June	2	1	None
July	6	1	None
August	7	3	1 – application approved
September	4	4	2 – 1 approved and 1 refused
October	5	2	1 – application approved
November (of those considered)	8	7	2 – applications refused
November (extraordinary)	5	1	None
December	2	1	1 - refused
2024			
January	4	1	None
February	5	1	1 - refused

- 1.8 It can be seen that in 2022, for 4 months (August-November) there were no referred applications (by virtue of their omission from the table). The majority of decisions made by Planning Committee align with the officer recommendation. Of those overturned, all 4 were approved and 6 refused. Applicants have a right of appeal against refused decisions whereas neighbours or other interested parties do not have a third-party right of appeal. Members will be aware that 1 of the refusals was allowed on appeal in December 2023 and a further application is currently at appeal (although this was not a referral), with the inquiry to be held in April 2024. However, 5 of the refused applications are still within their timeframe for being appealed.
- 1.9 Further to this, Michael Gove MP issued a Written Ministerial Statement (WMS) on 19 December 2023 [‘The Next Stage in Our Long Term Plan for Housing Update’](#) as reported to Members at Planning Committee meeting on 18th January 2024 (updates to National Planning Policy Framework and WMS), stated:

“On planning committees, we rightly see elected representatives judge the merits of significant applications – and it is vital that they focus their time on applications that truly merit such scrutiny, and arrive at decisions following legitimate reasoning. On this basis, I have asked the Planning Inspectorate

to start reporting to the department about cases where a successful appeal is made against a planning committee decision, and the final decision is the same as the original officer's recommendation. The overturning of a recommendation made by a professional and specialist officer should be rare and infrequent – such that I have reminded the inspectorate that where it cannot find reasonable grounds for the committee having overturned the officer's recommendation, it should consider awarding costs to the appellant."

1.10 In addition to this, the WMS also refers to the speed at which decisions are made:

"As part of that reporting, we will expose the way in which some local authorities drag their feet. We will strip out the use of Extension of Time agreements, which currently mask poor performance. While I recognise that there will be instances where such agreements are necessary, I am concerned by the increase in their use – in particular for non-major applications, where the figure has jumped from 9% during the two years to March 2016 to 38% during the two years to March 2022. I therefore intend to consult on constraining their use, including banning them for householder applications, limiting when in the process they can apply, and prohibiting repeat agreements."

1.11 This is further to the government's [response to the consultation](#) in relation to increasing planning fees (came into effect on 6th December 2023) which would result in stronger (improved) performance assisted by financial support to assist those local planning authorities with clearing application backlogs. The WMS states:

"71. We are clear that an increase in planning fee income and resourcing to local planning authorities must lead to improved performance. It is our intention to introduce a new planning performance framework once we have increased planning fees and invested in supporting the capacity and capability of planning departments. However, we recognise that local planning authorities need a period of adjustment to any new planning performance framework, and we would reiterate our commitment to consult further on detailed proposals, including thresholds, assessment periods and transitional arrangements from the current performance regime."

1.12 The government has also recently placed two further planning authorities into special measures due to poor performance. For those in special measures, it means that an applicant has the right to bypass the local planning authority with its (major) application and submit this directly to the Planning Inspectorate for an Inspector to determine. As well as the decision not being in local hands, the fee for the application is also given to the Inspectorate whilst the Council would still be responsible for dealing with all of the associated administration.

1.13 In relation to decision-making timescales there is a statutory time period of 13-weeks for major developments (16 weeks when an application is subject to an Environmental Statement) or 8-weeks in all other cases. As Members will be aware from January's Committee report, removing extension of time (EoT) agreements from our performance has significant affect. The rolling 24-month performance is as below, covering 1st December 2021-30th November 2023.

Application Type	Performance without EoT's (December 2021 – November 2023)
Major	52
Non-major (all)	61
Householders	69
Non-major without householders	54

- 1.14 In relation to the performance target to meet (and exceed) in order to not be deemed to be poorly performing is, for majors 60% and for non-majors 70% which includes householders. This is the current target whereby EoTs contribute towards performance. It is anticipated the Government review regarding their use will likely affect this. A review of our processes is underway to review all areas where we might be able to improve performance, noting that EoT agreements are frequently entered into at the applicant's/agent's request. Additionally, with the introduction of the planning application fee increase, the timescale for guaranteeing a decision to be issued for non-major applications has been reduced to 16-weeks (from 26 weeks which now only applies to major developments). This guarantee means that when a decision has not been made within these respective timescales, the fee has to be returned unless an extension of time is agreed between both parties (subject to other exclusions as well). This has significant financial implications e.g. 9 dwellinghouses has a fee of £5,202 associated with it.
- 1.15 Additionally, for applications presented to Planning Committee, the time for determining as well as the overall cost associated with presenting are both increased compared to delegated decisions. It is suggested that consideration should be given to all of these matters in relation to the Scheme of Delegation, whilst not undermining the role of our elected District Members in representing their communities.
- 1.16 In terms of the development proposals that a planning committee should determine (aside from departures and those submitted by senior officers or Members, for example) the general principles are these should comprise proposals that require wider public scrutiny, raise new policy issues (related to planning), or the implications of the decision are wider than local interest.
- 1.17 Notwithstanding the above and whether more substantial changes to delegation are agreed or not, it is suggested the delegation arrangements are simplified to minimise risk to the Council in relation to making a decision for a matter that is not expressly set out within the Scheme of Delegation. This is particularly relevant with some of the changes that are imminent as a result of the Levelling-up and Regeneration Act 2023 (LURA).
- 1.18 Further discussion is given to this in the context of other possible changes below.

Public Speaking

- 1.19 The Local Government Association '[Probity in planning: Advice for councillors and officers making planning decisions](#)' sets out that whether public speaking is permitted is for each council to determine. It sets out that when it is permitted, along with

broadcasting of meetings, that public confidence is generally enhanced and lobbying might be reduced.

- 1.20 In view of this, research has been undertaken into public speaking which explores whether and how other councils across England and Wales allow public speaking in their planning committee and their protocols for allowing public speaking. The research has found that Newark and Sherwood District Council are one of very few councils that do not allow public speaking with the majority of councils having some degree of public speaking protocol in place. A breakdown of this can be found in the table below.

Types of LPA	Public Speaking - Yes	Public Speaking - No
District councils (164)	160	4 (incl. NSDC)
County councils (21)	19	2
Unitary authorities (62)	60	2
Metropolitan districts (36)	30	6

- 1.21 The research has established that the majority of councils permit public speaking between a range of 3 and 5 minutes. Some do allow less time at just 2 minutes, however the majority are 3 minutes. Those who can speak generally include a representative of a neighbourhood plan group (where the neighbourhood plan has planning weight), a Town or Parish Council representative, an individual objector or supporter (this is usually a spokesperson that speaks for all in support or all who object) and either the applicant or their agent. Some councils, such as Bassetlaw also permit the County Councillor to speak whose ward the application site is located within.
- 1.22 Newark and Sherwood District Council is the only Council in the East Midlands that currently does not have public speaking at Planning Committee. Across the last 4-years, a number of applicants (or their agents), supporters and objectors have queried and challenged why public speaking is not allowed. Members of Planning Committee that a report was presented to Full Council on 13th February with various changes to the Constitution to facilitate public speaking for Planning Committee, should the Committee determine that this is what it would like to allow.
- 1.23 Concerns have been raised by some parties in the past in relation to allowing public speaking, that non-material considerations will be raised by speakers; that if an agent speaks, they have an ‘advantage’ over the general public and ‘new’ items might be raised. Planning Committee Members will be aware that, as the local planning authority, we determine planning applications in accordance with the development plan and any ‘material considerations’. Examples of material considerations include government advice and policy, the impact on residential amenity, highway safety and traffic, noise and disturbance, smell, design and external appearance, the impact on Listed Buildings and Conservations Areas and Trees, etc. Such matters are drafted into the existing [‘Protocol for Members on Dealing with Planning Matters’](#) and will be proposed are retained for any variation to this document.
- 1.24 In addition, the Local Government & Social Care Ombudsman have produced a document [‘Not in my back yard: Local people and the planning process’](#). This document has been prepared to assist parties who might be looking to raise a complaint to the Ombudsman, in relation to a planning related matter, as to which complaints they are

likely to investigate, the role of councillors and the most common issues and learning points. For information, a number of complaints against the Council in relation to planning have been raised with them over recent years, the majority have not been investigated or, where they have, have not been upheld.

- 1.25 In relation to public speaking (as well as any Scheme of Delegation), the Ombudsman's document addresses the role of local councillors (page 7):

"Councils will often ask councillors on town and parish councils for their view on planning applications.

This can help give a local voice on issues arising from proposed developments. Town and parish councils may recommend that planning permission is granted or refused. However, town or parish council views are given no more or less weight than any other comments a council receives."

- 1.26 This review into the possibility of permitting public speaking also enables a review of the Constitution (planning related only), giving opportunity to consider the wider input of the public, applicant and other interested parties into our decision making.

- 1.27 If public speaking were introduced, there would need to be rules that have to be followed to ensure that the process is fair and transparent for those wishing to partake and also for Members on Planning Committee, to ensure that sound planning judgements continue to be made. The LGA's Probity in Planning, details that those speaking for a development and those against should each be given the same amount of time.

- 1.28 It is therefore suggested that the following would be permitted to speak:

- Objector(s)
- Statutory Consultee
- Parish/Town Councillor
- Applicants or their Agent, or supporter
- Ward Member

- 1.29 This would enable all who might wish to speak, both for or against a proposal to have equal and fair opportunity. Whilst the list includes Statutory Consultees, this would be to ensure there is scope should any wish to. In the past, approximate 4 ½ years, a consultee has only attended on approximately 3 occasions at the specific request of planning officers.

- 1.30 As well as benefits in allowing public speaking, its introduction could have the following implications:

- Longer meetings;
- Non-material planning reasons could be raised; and
- Late new information could be introduced.

- 1.31 In relation to the impact upon the length of a committee, the greatest number of planning application reports the Council has had on an agenda in 2022/2023 was 10 in February and to date in 2023/2024 - April with 15 reports. However, the average across 18 months is 5-6 items per meeting. From past experience of councils elsewhere, it is not practice for all who are permitted to speak to request to do, nor is it known for every report to have someone wishing to speak to it.

1.32 An analysis of time is provided within the table below. This reviews meetings this calendar year and provides details of the number of items, the number of speakers who registered (noting that only ward members and town/parish councils can currently speak), the worst-case scenario if public speaking were introduced and lastly what is expected would be the more likely estimate of time, based on the list above. Due to the frequency of Statutory Consultees wishing to speak, this time has not been included. It is also anticipated that a number of town and parish council representatives and ward councillors speak to Planning Committee due to public speaking not currently being allowed. If it were, then some ward and town and parish councillors might no longer wish (need) to do so. This analysis also takes account of applications submitted by the Council, the majority of which are not controversial. In relation to the likely amount of additional time, the assessment in the final column has taken account of:

- (a) Number of speakers who did register.
- (b) Whether the application was for approval or refusal.
- (c) Number of objections and/or letters of support for the proposal.
- (d) Type of development proposal i.e. controversial? NSDC or member of staff?
- (e) Whether ward and/or parish/town council representative registered.
- (f) Past experience from other authorities in terms of the numbers who have registered.

Date of Meeting 2023	Total number of Items	Number of NSDC applications	Number of speakers registered	Current Arrangements Minutes added (5 minutes per speaker)	Possible minutes added (based on 3 minutes per speaker and parish and ward cllrs, objector, applicant / supporter)	More likely minutes based on 3 minutes per speakers
January	3		1	Up to 5	Up to 36	Up to 6
February	12	5	4	Up to 20	Up to 84	Up to 45
March	11	1	10	Up to 50	Up to 120	Up to 72
April	15	5	10	Up to 50	Up to 120	Up to 75
June	2		0	No additional time	Up to 24	Up to 3
July	6		2	Up to 10	Up to 72	Up to 39
August	7		3	Up to 15	Up to 84	Up to 36
September	4		4	Up to 20	Up to 48	Up to 24
October	5	1	0	No additional time	Up to 48	Up to 9
November*	13	3	6	Up to 30	Up to 120	Up to 63

December	2		1	Up to 5	Up to 24	Up to 16
----------	---	--	---	---------	----------	----------

*This meeting was subject to deferral of items with an extraordinary meeting arranged.

- 1.33 As can be seen from the table, there is not a direct correlation between the number of applications on the agenda and the number of representatives who registered to speak.
- 1.34 If public speaking were allowed, it would necessitate in changes to the '[Newark & Sherwood Local Development Framework Statement of Community Involvement](#)' (SCI) and the Planning Protocol for Members on Dealing with Planning Matters, the latter including its title. The contents of the Protocol would be paramount to ensure that all who are interested in speaking know the arrangements and that meetings continue to be well-run. Changes to the SCI would require approval by Cabinet.

Late Representations

- 1.35 At present, any correspondence received from interested parties, the applicant or consultees etc. after the agenda is published is reported to members of the Planning Committee via, generally up to two, circulations of 'late representations'. The first is circulated on the Tuesday afternoon/early Wednesday before Planning Committee and the second, usually on the morning of Planning Committee.
- 1.36 Generally, the first circulation of late representations provides specific comment or clarification in terms of the contents of specific reports. This is frequently from the applicant. Additionally, neighbours, and other interested parties, will often provide comments particularly when the recommendation is one that they support.
- 1.37 The second circulation is, more often than not, from neighbours and interested parties only due to not being happy with the recommendation, as well as clarification from Officers on particular planning matters. Rarely do the additional late representation add any new matters that have not been considered within the report. Additionally, it has been known for a late representation to be received during the application's presentation to Committee.
- 1.38 All late representations received are published on the Council's website alongside the agenda reports to ensure transparency in the decision-making. The Council's Protocol, at present, is silent in terms of when representations will not be circulated to Members of Planning Committee. Members will be aware the statutory minimum amount of time for consultation and notification is 21-days (excluding any bank holidays). However, responses received after this are always reported and considered when the matters raised are relevant to the development under consideration. This is considered to be good practice.
- 1.39 It is anticipated that if public speaking were permitted, that the number of late representations received would be likely to reduce overall, but especially those received after the initial circulation. However, even if public speaking is not introduced, alternative procedures to current practice are recommended and discussed below.

2.0 Proposal/Options Considered and Reasons for Recommendation Scheme of Delegation

The options for the Scheme of Delegation to Officers are as follows:

Option 1 – Do Nothing

- 2.1 Whether the wider suggested changes below are accepted or not, it is not recommended that a 'do nothing' is appropriate. As referred to above within paragraph 1.17, the LURA will result in changes to legislation which will amend existing legislation titles under which our decisions are made and referred to within the Scheme of Delegation, for example

"1.14. To enter land to execute and recover the costs of works required by a Section 215 notice under Section 219 of the Town and Country Planning Act 1990."

- 2.2 It is therefore recommended that the Scheme is significantly simplified to ensure that decisions are not made when they should not reasonably be withheld. This would not undermine the role of Planning Committee but ensure the risks of judicial review against the Council is minimised.

Option 2 – Omission of Reference to Specific Sections of Law Only

- 2.3 This option would minimise the risks as set out in paragraphs 2.1 and 2.2. However, with consideration to the discussion within section 1.0, it would still mean that a large number of applications are presented to Planning Committee, a number of which with regard to the role of a planning committee to "...judge the merits of significant applications – and it is vital that they focus their time on applications that truly merit such scrutiny..." would not pass this 'test'.
- 2.4 Additionally, it would still result in some unfairness in the process with referrals to Ward Members as a result of Town/Parish Council representations.

Option 3 – Omission of Reference to Specific Sections of Law and Review of Current Arrangements

- 2.5 This would have the benefits as set out in paragraph 2.3. Additionally, the role of Town/Parish Councils (including Meetings) in decision-making is important in ensuring the views of their electorate are represented in the planning process. However, the referral process as it is currently, places each town/parish council in an elevated position over any other party involved in the planning process. All involved should have an equal voice, or the possibility of having an equal voice. Additionally, this puts a greater responsibility on planning officers to ensure that referrals are made and that they are made to the correct councillors. It also adds uncertainty in the planning process for all involved as it is not known whether the decision will be determined by officers or committee as well as adding delay to the process.
- 2.6 Instead, and akin to other council's constitutional arrangements who have Town/Parish Councils (T/PCs), it is proposed that the onus is placed upon them to contact their Ward member(s) should they consider that an application should be considered by Planning Committee. In turn, the Ward Member as recommended would be required to consider the rationale for the T/PC's support or objection and decide that it is a matter requiring the wider debate or advise the T/PC why not, with reference to the suggested amended Protocol. This requirement for why an application is requested to be determined by Planning Committee is in place as part of the current adopted Scheme of Delegation. The majority of Ward Members already do this, so this would unlikely introduce new requirements for the Ward Member.
- 2.7 It is suggested that due to this being a change compared to existing processes that its introduction is delayed to allow full engagement to take place with all T/PCs prior to this coming into effect and enable them to put any necessary arrangements into effect.

It is therefore suggested that its introduction comes into effect 3-weeks after any Planning Committee approval to tie-in with the publication of the weekly list. Additionally, all District Members will be made aware of the changes and what they will be required to do.

(B) Public Speaking

The options for public speaking are as follows:

Option 1 – Do nothing

- 2.8 In view of fairness, openness and enabling parties to take part in the decision-making process, this option is not recommended.

Option 2 – Public speaking is introduced with 3 minutes for each speaker

- 2.9 This is recommended to enable all parties who are interested in a development proposal to actively take part in the whole of the planning process. The amount of time for each speaker, which speakers are permitted to speak and why are suggested below.

- Objector
- Statutory Consultee
- Town/Parish Councillor or Adjoining Town/Parish Councillor (or their representative)
- Applicant or Agent or Supporter
- Ward Member or Adjoining Ward Member

- 2.10 To ensure fairness, it is recommended that all speakers are given the same amount of time to speak. Currently the time limit is up to 5 minutes, however in view of the potential increase in the number who might wish to speak it is suggested this is reduced to 3 minutes maximum for all. This reflects the time allowed within the majority of other council constitutions, although as noted earlier, this does vary.

- 2.11 It is suggested that only 1 Ward or Adjoining Ward member is permitted to speak as well as 1 Town/Parish councillor. This is to ensure that fairness is provided in relation to those in support of and in objection to a development proposal i.e. the number of speakers does not actively skew speakers in either direction. It is proposed that the host Ward and Town/Parish councillors are given priority in terms of being permitted to speak if more than one wishes to.

- 2.12 For members of the Planning Committee, they would have the option of speaking as a Ward member if no other member in their ward registers. This would not prejudice their ability to take part in the debate as a councillor representing the whole of the Council. Members of Planning Committee will be aware that their decision-making is on the basis of the District as a whole, as opposed to their Ward, if applicable, in particular.

- 2.13 Only 1 objector and only 1 person in support would be permitted to speak. In terms of the supporter, this would be either the applicant or their agent, or, if neither wishes to but another party supports the proposal, they would be able to. Consideration was given to allowing a supporter as well as the applicant or agent. However, this has potential for the applicant to actively seek another party to speak, effectively on their behalf in support and would thus also skew the numbers. It is recommended the applicant or their agent has priority over any other supporter.

- 2.14 Statutory consultees do not often wish to speak, however there might be an occasion when they wish to represent the body (and the expertise of) for which they work. It is therefore suggested that they are included within the public speaking scheme to ensure fairness in enabling all interested parties to have their voice heard.

Option 3 – Public speaking be introduced with alternative speakers and time to Option 2

- 2.15 Reducing the time to less than 3 minutes is not considered reasonable to enable speakers to make their point clearly and effectively. Equally, allowing more than 3 minutes would likely result in repetition, matters raised not directly related to the planning application or not being a material planning consideration. Some council's constitutions allow for extra time to be given to speakers at the discretion of the Chairman. However, if this was permitted and it wasn't permitted for the first speaker and thus thereafter all others, it would lead to either unfairness or the need for earlier speakers to have the opportunity to return. This would potentially open up the meeting for public debate which would not be the purpose of allowing public speaking.
- 2.16 Allowing alternative speakers would more than likely, as discussed in the section above, result in skewing of the application to speakers either objecting to or supporting a planning application.
- 2.17 This suggestion is therefore not suggested.

Option 4 – Not allowing all listed as speakers under paragraph 2.9

- 2.18 Not permitting one or more of the suggested speakers in paragraph 2.9. the right to speak or, for example, allowing 2 ward councillors (or adjoining) whilst not allowing the applicant to have any other party speaking in favour of their scheme could lead to actual or perceived bias and potentially result in complaints and/or legal challenge. Allowing more people to speak across all the categories could result in lengthy and potentially unruly meetings.
- 2.19 The suggested people and the time limit is therefore as set out in Option 2.

Concerns and Questions

- 2.20 Some parties have indicated that some speakers might have an advantage over other speakers due to their confidence, knowledge and experience of planning. Equally concern has been raised that speakers might talk about non-material planning considerations.
- 2.21 In relation to the latter, the suggested Protocol for Dealing with Planning Matters, section 12.13, provides a table of examples of both material and non-material considerations to assist. These are also published on our website under '[View or comment on a planning application](#)'. However, the training provided to and undertaken by Planning Committee members enables you to know what can and cannot be taken into account in the determination of a planning application. Additionally, the Officer presenting the scheme would be able, subject to the Chairman's agreement, to respond to what speakers have said to guide the debate.
- 2.22 With regards to knowledge, speakers would be required to collaborate when more than 1 person wishes to speak in a particular 'category' i.e. generally objectors although it could be supporters if the applicant or their agent does not wish to speak. This then enables parties to agree who speaks and, from past experience, this person is generally

someone who is confident at speaking and able to articulate the views of the objectors. When there is only 1 speaker who is perhaps less confident, the guidance contained within the Protocol will assist in providing detail of the process. Additionally, the respect given by members and officers to those wishing to take part in the planning process should assist with any nerves.

- 2.23 There has also been concern that new material planning considerations will be raised. Due to the depth of Officer reports, this is considered unlikely. However, in the event that a speaker raises a matter that has not been considered and requires clarification, it would be reasonable to consider deferring the application for further consideration by the case officer. This scenario could happen now as correspondence is sometimes received from interested parties after the Committee has debated and determined the application. However, this would have the risk of a judicial review and/or complaint.
- 2.24 Lastly, to ensure fairness in relation to the ability to speak to the Planning Committee, it is suggested that only those who have commented on the application 10 days prior to the printing of the agenda will be able to register. This is to try and mitigate the risk of any parties coming together in order to skew the decision-making process in any way.

(C) Late Representations:

Option 1 – Do nothing and continue with the current practice of circulating late representations

- 2.25 The majority of late representations do not raise new material planning considerations as is noted within the word document shared with members prior to meetings. When new considerations are raised, this has resulted in items either being withdrawn from the agenda or clarification provided as part of the late representation circulation as well as within the Officer presentation.
- 2.26 Updates would still be provided by the Officer as part of the presentation and this aspect is covered within Option 2.
- 2.27 This option is not recommended.

Option 2: Circulate late representations received by midday, 2 days before the Planning Committee meeting

- 2.28 Whilst the minimum statutory time period for providing comments to a planning application is 21-days (excluding bank holidays), comments received up until the decision is made need to be considered. Having a cut-off time for all involved in the planning process so they are aware of when correspondence will be circulated provides clarity. Some parties, particularly applicants and agents, who submit comments after the agenda is printed will have the opportunity to speak to the Planning Committee, if public speaking is allowed, which will reduce the amount of correspondence circulated.
- 2.29 If a cut-off time is introduced, correspondence received after this time will be reviewed by the Business Manager – Planning Development or Authorised Officer to determine whether any new material planning considerations have been raised. If they are, then the item will be suggested is withdrawn from the agenda, to enable full consideration and presentation at a subsequent meeting. However, if late correspondence provides clarification on a point e.g. Highways requesting indexation to a financial contribution, this could still be reported verbally without fettering member's ability to determine the application in a sound manner.

2.30 By having the cut-off time at midday, 2 days before the meeting, provides time for officers to collate and evaluate the responses, for these to be shared with Planning Committee members, who would then have sufficient time before the meeting to read and understand any implications in the context of the proposal.

Option 3: Circulate late representations received at an earlier date and time (i.e. prior to the time in Option 2)

2.31 Circulating representations received up to an earlier cut-off time would limit the time for people to make responses to the officer report after it is published. Although new matters are generally not received, the late representations currently circulated within the first tranche of correspondence often raise points of clarification which is helpful to the officer, particularly when this relates to the drafting of a condition, for example. If the cut-off time was brought forwards earlier than in Option 2, there would be a greater chance of matters being raised by speakers (if this is approved) requiring consideration during the debate of the application. This would prevent meaningful discussion between officers, which can often be useful, in advising members on the correct course of action.

2.32 This Option is therefore not supported. The suggested cut-off and circulation time is therefore as set out in Option 2.

(D) Protocol for Planning Committee

2.33 Should all or any of these amendments be approved or alternative amendments, the Protocol would need to be updated to reflect this. Additionally, as part of the review of the Scheme of Delegation (SoD), it is considered more appropriate for some aspects in the adopted SoD to be provided within the Protocol, for example 'rules' for referral.

2.34 Due to the suggested significant number of changes, the Protocol has been redrafted including a suggested change to its title from 'Protocol for Members on Dealing with Planning Matters' to 'Protocol for Planning Committee. This is due to the Protocol having rules for more than just Members.

2.35 In terms of the changes within the draft Protocol, these include:

- Use of social media;
- Details of requests to refer items to Planning Committee;
- Process within the Planning Committee;
- Rules regarding who is able to speak, when and for how long; and
- Site visits, with further clarification of who is able to attend.

2.36 The majority of the changes compared to the existing Protocol are self-explanatory. Areas have been amended to ensure that decision-making is fair and transparent and to enable all who are wanting to be involved have an equally fair opportunity of being able to take part.

Summary

2.37 The suggested amended Scheme of Delegation and Planning Protocol are attached as Appendices to this report. The changes to the Statement of Community involvement (SCI) required as a result of public speaking being introduced, if it is agreed, will require a report to Cabinet as well as consultation. This is proposed to be presented shortly.

3.0 Implications

- 3.1 In writing this report and in putting forward recommendation's officers have considered the following implications: Data Protection, Digital and Cyber Security, Equality and Diversity, Financial, Human Resources, Human Rights, Legal, Safeguarding and Sustainability, and where appropriate they have made reference to these implications and added suitable expert comment where appropriate.

Legal

- 3.2 Legal Services have worked with Planning Development in relation to the review of the Scheme of Delegation, Planning Protocol and this report and are happy with the contents and will be available for any queries or questions at Planning Committee.

Human Rights

- 3.3 Articles 6 'Right to a fair trial' and Article 10 'Freedom of expression' of the Human Rights Act 1998 both apply in respect to this report. Those wanting to be involved in the planning process should be given a fair opportunity to take part alongside anyone else. The suggested amendments within this report and as set out within the appendices would comply with these requirements.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972. Any documents that contain confidential information or personal information about individuals should not be included in this list.

Appendices

Scheme of Delegation – Appendix 1

Protocol for Planning Committee – Appendix 2

The Local Government Association '[Probity in planning: Advice for councillors and officers making planning decisions](#)'

Adopted [Planning Committee Scheme of Delegation to Officers](#)

Adopted [Statement of Community Involvement](#)

Adopted [Protocol for Members in Dealing with Planning Matters – Updated December 2022](#)