

# Brighton & Hove City Council

## Council

## Agenda Item 46

**Subject:** Constitution Review: proposed update to reflect national planning reforms

**Date of meeting:** 1 October 2026

**Report of:** Elizabeth Culbert – Director Governance & Law and  
Alison McManamon – Corporate Director City Operations

**Contact Officers:** Alison Gatherer/Katie Kam Legal Services and Nicola Hurley Head of Planning

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**Ward(s) affected:** All

**For general release**

### **1. Purpose of the report and policy context**

- 1.1 This Report asks members to note changes to legislation in the form of the Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026, which require the Council to fundamentally change how it makes decisions in its capacity as local planning authority. The Report asks Council to formally approve the changes to its Constitution as well as to related arrangements which are required to bring the new, national, approach into effect from 31<sup>st</sup> October 2026.
- 1.2 The report aligns with the commitments in the Council Plan 2023-2027 to ensure we are a learning council with well-run services. The proposals in this report have been developed to ensure they meet the requirements of the new legislation and reflect best practice/ statutory guidance. While consistent with the mandated national approach, the arrangements have been designed to ensure the best use of the Council's resources, taking into account the structures in place at this authority so as to introduce an approach to decision-making which is both compliant and also best meets the needs of residents and customers.
- 1.3 The changes are intended to ensure compliance with national planning reforms, via governance and ways of working that meet the needs of staff, residents and customers.

### **2. Recommendations**

- 2.1 That Council formally approves the changes to the Council's Constitution as set out in the Report and in the following Appendices, with effect from 31st October 2026:

Part 2B in Appendix 1 (Terms of reference Planning Committee)  
Part 2F in Appendix 2 (Scheme of Officer Delegations)

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Part 2H in Appendix 3 (Planning Scheme of Delegations)

Part 4E in Appendix 4 (Protocol for Members re planning applications)

Part 4E1 in Appendix 5 (Protocol for Planning Committee)

- 2.2 That Council authorises the Monitoring Officer to take all steps considered necessary or incidental for the implementation and incorporation of the changes outlined in this Report and Appendices, and authorises the Monitoring Officer to republish the Constitution with effect from 31<sup>st</sup> October 2026.
- 2.3 That Council delegates to the Monitoring Officer authority to further review and update the Constitution to ensure the arrangements set out in this report are properly integrated and reflected throughout the Constitution.

## **3. Context and background information**

- 3.1 The Council is required to keep its Constitution under review with a view to achieving efficiency, economy and effectiveness. This report reviews the Council's planning functions following national changes to the delegation of planning functions. It proposes changes to the Council's arrangements to ensure compliance with new Regulations coming into effect on 31 October 2026 through new provisions in sections 319ZZC – 391ZZF of the Town and Country Planning Act 1990 and contained in The Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026. These changes are mandatory.
- 3.2 The Government's stated objective in prescribing a national scheme of delegation of planning powers is to ensure greater clarity and consistency for the role of planning committees in decision making. The Government has advised that the presumption is that decisions on planning applications and associated matters are delegated to officers and only exceptionally referred to planning committee. This represents a major change to the Council's current approach.
- 3.3 Paragraph 4 of the statutory guidance states that the aim of 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 and that 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.
- 3.4 **National Changes to Schemes of Delegation**
- 3.5 The Regulations set out the types of applications where decisions:
  - (i) must be delegated to officers in all cases (in Schedule 1 to the Regulations); and
  - (ii) are presumed to be delegated to officers (Schedule 2 to the Regulations) unless:

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They meet at least one of the criteria in regulation 5(2) (the 'Gateway Test'); OR

They are an application made by or on behalf of a local authority, a member or officer of that authority or an entity owned or controlled (whether wholly or partly) by that authority or any of its members or officers (whether or not it is made jointly with another person);

AND the nominated officer and nominated member of the planning committee agree they should be referred to planning committee for determination. In the absence of agreement, the application will be delegated to officers for determination.

- 3.6 Where a planning function is not listed in either Schedule 1 or 2 of the Regulations, it is for the local planning authority to decide whether it should be delegated to an officer or referred to a committee for a decision as part of its constitution.
- 3.7 The ability for ward councillors, the Conservation Advisory Group and the Disabled Access Advisory Group to request applications to be called to committee is removed by these Regulations. So too are the current trigger points for referral to committee if a certain number of objections are reached.
- 3.8 The Council's Constitution must be amended to take into account these mandatory changes.
- 3.9 The new arrangements in the Constitution are set out in the Planning Scheme of Delegation at Appendix 3.
- 3.10 The list of applications which fall within **Schedule 1** (always delegated to officers) are set out in Part 2H in Appendix 3. They include minor planning applications, and applications for prior approval, the vast majority of which do not go to Planning Committee currently. These and the other types of applications set out in Part 4H will only be dealt with by officers.
- 3.11 The functions which fall within **Schedule 2** of the Regulations are also set out in Part 2H in Appendix 3. They include all major applications, listed building consents, advertisement consent and tree preservation order consent.
- 3.12 **The overriding presumption is that the functions listed in Schedule 2 will be delegated to officers.** A function in Schedule 2 (Schedule 2 Part 1 of our Planning Scheme of Delegation) can be referred to committee **only** where:

At least one of the criteria in Regulation 5(2) is met ("the Gateway Test") **or** it is an application made by or on behalf of the Council, a member or officer of that authority or an entity owned or controlled (whether wholly or partly) by that authority or any of its members or officers; **and**

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the nominated officer and nominated member of the planning committee agree to the referral.

- 3.13 The Regulation 5(2) criteria (one of which must be met for a referral to planning committee to be considered) are:

Criteria A – where the application raises a significant planning matter having regard to the development plan and any other material considerations

Criteria B – where the application raises an economic, social or environmental issue of significance to the local area.

- 3.14 The nominated officer should be the Head of Planning or equivalent officer who has extensive professional planning experience (with other senior planning officers providing cover in their absence).
- 3.15 The nominated member should be the Chair of Planning Committee (with the Vice-Chair in the first instance or other members providing cover in their absence).
- 3.16 Where agreement between the nominated officer and nominated member is not possible, the matter **must** be delegated to officers (regulation 5(3)).
- 3.17 The nominated officer and the nominated member must not be lobbied in relation to the decision on whether to refer an application to committee.
- 3.18 The changes to the Constitution are reflected in the Planning Scheme of Delegation at Appendix 3.
- 3.19 Schedule 2 Applications which by default are delegated to Officers but will be considered for referral to Planning Committee via the Gateway Test are listed in Schedule 2, Part 2 of the Planning Scheme of Delegation in Appendix 1, and comprise:
- Any application for planning permission that is not:
- (a) a householder application,
  - (b) a minor commercial application, or
  - (c) a minor residential application.
- 3.20 Applications for planning permission or listed building consent relating to Brighton Pavilion or the Brighton Dome.
- 3.21 Any other Schedule 2 Part 1 application that the Nominated Officer [Head of Planning] considers should be referred to committee for determination via the Gateway Test
- 3.22 Own-interest applications – while not subject to the Gateway Test - may also be referred to Committee with the agreement of the Nominated Officer and the Nominated Member.
- 3.23 These changes are reflected in the Planning Scheme of Delegation at Appendix 3.

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- 3.24 Any applications falling outside Schedule 1 and Schedule 2 are to be delegated to Officers. The Corporate Director – City Operations and Head of Planning retain delegated authority to consider referral of any item falling outside Schedule 1 and Schedule 2 to Committee for determination.
- 3.25 The other planning functions delegated to the Corporate Director – City Operations are located in Schedule 2, Part 3 of the Planning Scheme of Delegation, which is not intended to be an exhaustive list.
- 3.26 **Summary of proposed changes**
- 3.27 The proposed changes to the Constitution and its Regulations, Rules and Codes are as set out in the table below and in Appendices 1 - 6.

|                  |                                                                                                                                       |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------|
| Part 2B          | Amend Terms of Reference on page 13 relating to the Planning Committee.                                                               |
| Part 2 F         | Amend paragraphs 5.10, 5.12, 5.13, 5.14 and delete the entirety of Schedule 3                                                         |
| (new)<br>Part 2H | Insert new Planning Scheme of Delegation, Appendix 3                                                                                  |
| Part 4E          | Remove and substitute new PART 4E Protocol for Members regarding Planning Applications - Appendix 4                                   |
| Part 4E1         | Remove and substitute new PART 4E1 – Protocol for Planning Committee (including Appendix 1 & 2 relating to site visits) – Appendix 5. |

## 4. Analysis and consideration of alternative options

- 4.1 There is no option of not adopting the National Scheme of Delegation and reflecting the required approach in the Council's Constitution. Those changes are mandatory and set out in law.

## 5. Community engagement and consultation

- 5.1 The proposals set out in this report have been discussed and with Planning Committee members and their feedback has been incorporated in the report. As the changes described here are compulsorily required by national legislation, which does not provide for discretion at a local level, no external consultation has taken place.

## 6. Financial implications

- 6.1 The changes to the council's constitution as per the recommendations of this report do not have any direct financial implications. There is a risk that additional resources may be required within Planning to support administration of the Gateway Test, though this is currently low risk and anticipated to be contained within Planning budgets.

Name of finance officer consulted: John Lack Date consulted: 09/09/2026

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## 7. Legal implications

The legal implications are covered in the body of this Report

Name of lawyer consulted: Victoria Simpson      Date consulted 07.09.26

## 8. Risk implications

- 8.1 No risks have been identified, and the arrangements will be kept under review.

## 9. Equalities implications

- 9.1 Given the mandatory nature of these legislative changes, there is limited scope for alternative options. The changes concern the allocation of decision-making responsibilities between officers and the Council's planning committee and are administrative in nature. They are not expected in themselves to have a direct adverse impact on people with protected characteristics under the Equality Act 2010. The Council remains subject to the Public Sector Equality Duty when exercising its planning functions. The new arrangements will be kept under review to ensure that the Council continues to comply with its duties under the Equality Act.

## 10. Sustainability implications

- 10.1 No sustainability implications have been identified.

## 11. Other Implications

- 11.1 No other implications have been identified.

## 12. Conclusion

- 12.1 The proposed changes are recommended for the reasons outlined in this report.

## Supporting Documentation

### 1. Appendices

1. Extract from Part 2B of the Constitution to reflect the proposed changes
2. Extract from Part 2F of the Constitution to reflect the proposed changes
3. New Part 2H - Planning Scheme of Delegation
4. New PART 4E Protocol for Members regarding Planning Applications
5. New PART 4E1 – Protocol for Planning Committee

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